

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

— — —

IN RE: AUTOMOTIVE PARTS
ANTITRUST LITIGATION

Case No. 12-md-02311

MDL NO. 2311

Hon. Marianne O. Battani

STATUS CONFERENCE & MOTION HEARINGS

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, May 6, 2015

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1 Detroit, Michigan

2 Wednesday, May 6, 2015

3 At about 10:00 a.m.

4 — — —

5 (Court and Counsel present.)

6 THE CASE MANAGER: Please rise.

7 The United States District Court for the Eastern
8 District of Michigan is now in session, the Honorable
9 Marianne O. Battani presiding.

10 All those having business before this Honorable
11 Court, please draw near and you shall be heard. God save
12 these United States and this Honorable Court.

13 Please be seated.

14 The Court calls Case No. 12-md-02311, In re:
15 Automotive Parts Antitrust Litigation.

16 THE COURT: Good morning everybody.

17 MASTER ESSHAKI: Good morning, Your Honor.

18 ATTORNEYS: (Collectively) Good morning.

19 THE COURT: We have a full house today. Must be a
20 popular day, no weather restrictions. Okay. We are ready to
21 go.

22 Mr. Esshaki is here to participate with us, and I
23 know that -- I guess I don't know what but some of you have
24 motions with him after we complete our hearing today.

25 Okay. Let's just start. Who is going to review

1 status of settlements? And, again, we will follow the same
2 procedure; give your name and who you represent.

3 MS. SALZMAN: Good morning, Your Honor.

4 Hollis Salzman for the end payors.

5 We just have two settlements to report on. One is
6 the T. Rad settlement which was previously announced to the
7 Court. We are working out the final details and hope to be
8 able to present to the Court shortly.

9 We have another settlement with one of the
10 defendants, we can't disclose the amount or the party yet,
11 but we hope to be able to do so shortly.

12 THE COURT: Okay.

13 MS. SALZMAN: Thank you.

14 THE COURT: Very good. So we have two settlements
15 coming. We have end-payor plaintiffs and dealerships'
16 motions to disseminate -- there you are.

17 MR. CUNEO: Jonathan Cuneo for the dealers.

18 We are in the same position on settlement as
19 Ms. Salzman.

20 THE COURT: Okay.

21 MR. CUNEO: I just -- ditto. Okay. Thank you.

22 THE COURT: Let me ask both of you in terms of
23 these settlements, Mr. Cuneo and Ms. Salzman, do you
24 anticipate that you will have these resolved by our next
25 status conference or do you need some interim dates?

1 MS. SALZMAN: We are not prepared to ask for
2 interim dates at present because some of it is out of our
3 control, it is working out details of settlement agreements.

4 THE COURT: Okay.

5 MS. SALZMAN: But if we are able to do so prior to
6 the status conference, we would ask the Court at that point
7 for interim dates otherwise we would wait until the September
8 date.

9 THE COURT: Okay. Mr. Cuneo, same thing?

10 MR. CUNEO: Same thing.

11 THE COURT: Okay. Very good. If you need dates in
12 between you will just call and I'm sure we'll be able to
13 accommodate it.

14 MS. SALZMAN: I didn't realize, I wasn't looking at
15 the agenda, but we are up for point two on the notice.

16 THE COURT: Okay. You might as well stay right
17 there.

18 MS. SALZMAN: I shouldn't have sat down. Again,
19 Hollis Salzman for the end payors.

20 Notice, Your Honor, we are working very closely
21 with our notice providers and notice experts to provide the
22 Court with the best notice possible for the class. We hope
23 to have something to the Court within the next 30 to 60 days
24 but preferably sooner if we can. We are looking at some
25 type -- proposing a schedule to the Court with the notice

1 plan so that final approval would occur during this fiscal
2 year -- or during 2016.

3 THE COURT: 2000 --

4 MS. SALZMAN: 2015.

5 THE COURT: 2015?

6 MS. SALZMAN: Yes.

7 THE COURT: Okay.

8 MR. CUNEO: We are in the same position -- Your
9 Honor, the dealers are in the same position, and we hope to
10 be able to do even better than the time schedule that
11 Ms. Salzman --

12 THE COURT: Okay. We have a race.

13 MS. SALZMAN: It is a race.

14 THE COURT: Okay. Thank you.

15 MR. MAROVITZ: Thank you, Your Honor.

16 Andy Marovitz for Lear Corporation. I'm here to speak for
17 Lear and for Kyungshin Lear.

18 We are obviously very much in agreement with
19 getting these settlements as to Lear and Kyungshin Lear by
20 the end payors and the dealers noticed and to get final
21 approval by the end -- no later than the end of 2015. These
22 are the only two cases in this entire auto parts litigation
23 that remain against these two entities so when we come before
24 Your Honor next time we are very hopeful that we can get a
25 final hearing and approval hearing set for calendar year

1 2015. It is important to our clients to get the piece that
2 they negotiated.

3 THE COURT: Okay.

4 MR. MAROVITZ: Thank you.

5 THE COURT: Thank you. All right. Anybody else?

6 (No response.)

7 THE COURT: Okay. The next issue, the depositions
8 of incarcerated non-U.S. citizens.

9 MR. HANSEL: Good morning, Your Honor. Greg Hansel
10 for the direct purchasers.

11 In Section 6 of the status report is a list of
12 non-U.S. citizen incarcerated defendants in related criminal
13 cases who have not yet been released. Three of those are
14 affiliated with Takata Corporation including Mr. Fujino, who
15 is scheduled for release on May 17th, 2015, which is coming
16 right up.

17 We are in advanced discussions with Takata
18 regarding a stipulation similar to the ones entered into with
19 Denso and other defendants in the past providing that the
20 plaintiffs may take depositions of their employees at agreed
21 locations in the United States or nearby, and therefore if we
22 are able to finalize that stipulation with Takata we would
23 not need to ask the Court to depose Mr. Fujino or other
24 Takata personnel while they are still in prison or when they
25 are released and before they return to Japan.

1 So we are hopeful in discussions with counsel for
2 Takata that we will be able to reach agreement on that. The
3 same is true with others; we will continue to attempt to
4 reach those agreements, and in cases in which the direct
5 purchasers do not yet have an action pending, we understand
6 that the indirect purchasers likewise are pursuing those
7 discussions with defendants with regard to their personnel.

8 THE COURT: Has that worked out that all of the
9 defendants who have been incarcerated have been deposed here
10 so far -- or, I mean, will be deposed here so far?

11 MR. HANSEL: We haven't deposed any of them yet but
12 we have agreements to depose all of them at a convenient
13 location in or near the United States.

14 THE COURT: Because you have a whole 'nother
15 problem going to Japan to do this, do you not?

16 MR. HANSEL: That's correct, depositions there are
17 limited in the embassy.

18 THE COURT: Okay.

19 MR. HANSEL: Thank you, Your Honor.

20 MR. REISS: Your Honor, Will Reiss for the
21 end-payor plaintiffs.

22 I just wanted to echo Greg's sentiments for the
23 end-payor plaintiffs. We have been involved with the directs
24 in trying to coordinate those depositions and are moving
25 forward with that, so we are in the same position. Thank

1 you.

2 THE COURT: Okay. Good. Thank you, Mr. Reiss.

3 Mr. Hansel, I forgot to ask you while you were up
4 here, did you do this agenda today too? I know you did it
5 last time.

6 MR. HANSEL: My partner, Randall Weill, did the
7 agenda.

8 THE COURT: Okay. Thank you. Thank you again.

9 MR. HANSEL: Thank you.

10 THE COURT: The Court website.

11 MR. FINK: Your Honor, I think that Mr. Iwrey, who
12 has --

13 THE COURT: I was looking -- yeah.

14 MR. FINK: -- been working hard on this should be
15 the one to speak to it.

16 THE COURT: All right.

17 MR. IWREY: Good morning, Your Honor. Howard Iwrey
18 for -- on behalf of the defendants.

19 We have come to an agreement on the format of the
20 website. We are currently in discussion over the breadth of
21 the content, and we suggest that we go to the administrator
22 of the website to determine the size limitations and the
23 process.

24 THE COURT: Okay. Let me before you begin get the
25 others on the record who have assisted you.

1 MR. SCHNATZ: Adam Schnatz for the end payors.

2 MR. FINK: David Fink for the direct purchaser
3 plaintiffs.

4 MR. BLUM: Alexander Blum for the dealership
5 plaintiffs.

6 THE COURT: Okay. Did you meet with Josh?

7 MR. IWREY: We had a telephone call, and then what
8 I suggest is we set up something where we meet in person in
9 the next few weeks.

10 THE COURT: Okay. Because, you know, first, I
11 think that he would be very interested in adding this now
12 that I explained to him -- I have talked to him -- why I
13 think it is important that we be there, so I'm sure they will
14 be cooperative. If you have any issues you want me to help
15 with, please -- not technical but --

16 MR. IWREY: There may be a few but I think we'll be
17 able to work things out.

18 THE COURT: Okay. Good. Thank you, Mr. Iwrey.

19 MR. SCHNATZ: Thank you.

20 MR. IWREY: Thank you, Your Honor.

21 MR. FINK: Thank you, Your Honor.

22 THE COURT: Global stipulations and orders
23 regarding confidential information, experts, ESI and document
24 preservation?

25 MR. WILLIAMS: Steve Williams for the end payors.

1 This issue may not be ready for the Court to do
2 something today, and it might be appropriate to go to the
3 master first. The issue is --

4 THE COURT: I had down here master so that's why I
5 want you to tell me why I --

6 MR. WILLIAMS: We on the plaintiffs' side believe
7 that we are at a point where there should be uniform orders
8 that apply in these cases, that we shouldn't be negotiating
9 in each of what are the constituent cases of 2311, the same
10 documents that we have all done, and for that reason we have
11 made those proposals. I actually think other than the
12 confidential information document we are more or less in
13 agreement with one key distinction being is it one order that
14 would apply to everything that we think makes perfect
15 sense --

16 THE COURT: Okay.

17 MR. WILLIAMS: -- or should it be one for every
18 single case?

19 THE COURT: Let me stop you there because I really
20 don't want to get into it. I do want the master, and we are
21 going to -- there is another issue here, maybe we should just
22 take it now on that other protocol, but I do want you to go
23 to the master and, you know, work with him and work out these
24 protocols, and then any objections, I will hear objections
25 but they must be formal objections. I don't want to be in a

1 position of advising the master or advising any party as to
2 how it should be. And I may have overstepped my bounds last
3 time when I made a comment as to what I was thinking because
4 what I'm thinking on these issues right now is not really
5 important, it is the decision between the -- the argument
6 between the parties and the decision of the master that
7 counts, and then if there is an objection I will deal with
8 it.

9 MR. WILLIAMS: Thank you. And I think we can do
10 that promptly. We have met and conferred with the
11 defendants, the positions have been framed, so I think we can
12 present that to the master very quickly.

13 THE COURT: Good. Thank you very much.

14 MR. WILLIAMS: I'm going to stay here because of
15 the next item.

16 THE COURT: Okay. The next one is yours.

17 MR. WILLIAMS: Not solely mine. So the next
18 item --

19 THE COURT: The subpoenas to the original
20 equipment --

21 MR. WILLIAMS: As the Court may recall, the parties
22 were directed, and this is in the indirect-purchaser cases,
23 the end-payor cases and the auto-dealers case, to work with
24 the defendants on what we refer to as a joint subpoena and
25 over the course of the last few months the end payors, the

1 auto dealers, the truck dealers, the City of Richmond and the
2 defendants have all worked together to come up with one form
3 of subpoena so that the OEMs are not being burdened with
4 multiple subpoenas, and so that it can be done in a
5 coordinated fashion to minimize disruption to the OEMs.

6 The directs have interposed comments about those
7 subpoenas. Our view, and I believe the defendants share this
8 view, is that the most appropriate and the most efficient way
9 to address this issue would be to permit the subpoenas to be
10 served, the result of the process that we went through, and
11 then at that time any party who believes it has a stake or an
12 interest in that can file whatever the appropriate paper
13 would be, whether it be a motion to quash, an objection, and
14 therefore the OEMs or the directs if they choose could
15 interpose those objections at that point, but our view
16 certainly for the plaintiffs is it is premature now to have
17 what in the sense is an advisory opinion because nothing has
18 been served, so we believe the appropriate step would be to
19 serve the subpoenas that are the product of the work we have
20 all done together and then address anyone's objections to
21 those subpoenas.

22 THE COURT: All right. Defense -- well, I see we
23 have another plaintiff but go ahead.

24 MR. CHERRY: I'm sorry. Just to support what
25 Mr. Williams said -- I'm Steve Cherry with Wilmer Hale

1 representing Denso.

2 We agree with Mr. Williams, we believe -- first of
3 all, we have worked several months together with all the
4 defendants and all the parties other than the direct
5 purchasers and we actually -- the direct purchasers asked not
6 to be involved in that process, I mean, we were copying them
7 on this and they asked not to be involved, but to come up
8 with this subpoena and now they have objected. And we
9 believe the most efficient process here again is to serve
10 these, let the OEMs -- whatever we worked out with the DPPs,
11 the direct-purchaser plaintiffs, will not determine what any
12 OEM produces. They will come in with their own counsel and
13 have their own objections, whatever the direct purchasers
14 think, and we will have to go through the process of dealing
15 with those objections. And so the most efficient way to do
16 this is to deal with that all at once, go ahead and serve
17 them, let them object, hear from the DPP -- the direct
18 purchasers at that time and just resolve it all at once.

19 THE COURT: Okay.

20 MR. KANNER: Good morning, Your Honor.

21 Steve Kanner on behalf of the direct-purchaser plaintiffs.

22 THE COURT: Good morning.

23 MR. KANNER: Not surprisingly, I couldn't disagree
24 more with my friends and colleagues. This is one of those
25 odd situations where not just politics but law creates

1 strange bedfellows, but I'm glad to see plaintiffs and
2 defendants together on certain issues.

3 As I said, I think this is the wrong issue. The
4 Court established a procedure months ago with respect to how
5 we work with Special Master Esshaki, who has done a great
6 job, and, secondly, how we should deal with discovery
7 disputes. This is a discovery issue. We received the draft
8 OEM subpoena, which I understand has been the product of
9 months of work between the end-payor group and the
10 defendants. We received it a few weeks ago. We responded to
11 Special Master Esshaki on the 28th of April with comments,
12 not objections. You know, an objection implies a formal
13 filing. We filed some comments.

14 Special Master Esshaki asked the defendants when
15 can we expect your thoughts on plaintiffs' comments? The
16 next thing we know that this was tied up with subpoenas to
17 not the OEMs but to tier one suppliers which has ripened to
18 the point where objections may be filed now. But with
19 respect to the OEMs, we are really at the nascent stages in
20 terms of discussing this. We are in front of Special Master
21 Esshaki. I understand that end-payor plaintiffs and
22 defendants would like to move ahead with this, but it is not
23 ripe for that, that's number one.

24 Number two, it is important to note, Your Honor,
25 the OEMs aren't parties to this particular matter. These

1 subpoenas focus on end-payor-related issues. In fact, and
2 Your Honor hasn't seen the subpoena yet, but they go to the
3 most privileged, secret, confidential information that OEMs
4 have. And I understand my colleagues' desire to have these
5 done formally, let them come in, but, Your Honor, and under
6 the guise of it is convenient to have one subpoena, there are
7 57 products that are included here, they go across the board.
8 If this Court wants to invite the type of protracted
9 discovery litigation that my colleagues are suggesting I
10 submit we are going to be here months and months and months.
11 Each OEM is going to come in and tell you any number of
12 things, first of which, we are not parties, we are not even
13 punitive class members. This is an entirely separate issue.
14 The end payors would like to prove their case, the damages
15 element of it with this, and the defendants want to respond
16 to the end payors showing their damages through this. And so
17 who is in the middle? The OEMs, the largest most significant
18 companies in America who don't have, as the saying goes, a
19 dog in that fight.

20 So what we sought to do, what Your Honor suggested
21 several months ago, was that we comment on subpoenas to the
22 OEMs at the appropriate time. Well, we did it within two
23 weeks of receiving the subpoenas. This is the opportunity
24 for us to meet with our colleagues and discuss and present it
25 to Special Master Esshaki so we can narrow down the issues so

1 this Court doesn't end up buying six months or a year of
2 hard-fought litigation. You know, there is another party in
3 this case -- or another party over here who ought to have
4 some comments today and that's counsel for Ford. Ford is an
5 OEM subject to the same subpoenas, and it is interesting, you
6 know, that Ford has been served with Rule 34 subpoenas with
7 respect to their case, a direct-purchaser case. The material
8 included in the subpoena we are talking about now is far
9 afield from that information, it is an entirely different
10 subpoena, and it seeks, as I said, the information that goes
11 to the heart of how the OEMs price their vehicles, how they
12 pay for them, the total bill of costs -- what it cost to
13 build an automobile, how they sell it, whether there is any
14 pass on.

15 First of all, we don't know if that information
16 even exists. Secondly, it is outrageously overburdensome for
17 these entities, and our job -- I see our job, both -- counsel
18 for all sides, is to try to streamline what is disputed,
19 bring it to Special Master Esshaki, and then bring it to you
20 if need be.

21 So I urge this Court to reconsider the position
22 being taken by my colleagues. It is not ripe and frankly it
23 is an end runaround to the system that we have established to
24 work with Judge Esshaki -- with Special Master Esshaki. I
25 cannot break that habit. Thank you.

1 MR. WILLIAMS: Your Honor, if I could respond
2 briefly? And with respect to my colleagues, I didn't want to
3 and I don't want to now get into the merits of the particular
4 request, frankly I think that's really a question if we are
5 going to go down this road and hold it up that would be
6 suitable for briefing. What I would say is these subpoenas
7 are not being issued in the direct purchasers case, they are
8 not parties to this, they don't have standing to object to
9 anything, these are only being issued in the indirect
10 purchaser cases. They don't represent the OEMs in the
11 indirect purchaser cases, the cases are not consolidated,
12 they are coordinated, so I think as a threshold matter first
13 there was something about the argument that suggested
14 delaying further for protracted negotiations somehow would
15 make this more quick, and I don't think that makes sense but
16 more important the parties with standing to be heard on this
17 are the defendants, the plaintiffs in the indirect purchaser
18 cases and the OEMs who will be receiving the subpoenas.

19 THE COURT: Okay.

20 MR. WILLIAMS: The directs are strangers to that.

21 THE COURT: So, Mr. Esshaki, you know what's
22 coming?

23 MASTER ESSHAKI: I welcome it.

24 THE COURT: I have no comment on it. I'm not
25 reconsidering because I didn't consider this matter. This is

1 going to have to go to Mr. Esshaki first, and you do what you
2 need to do with Mr. Esshaki, he will come to a resolution,
3 enter in an order, and then you can file your objections if
4 there are any and I will hear it, but I think it is a good
5 discussion, everybody while they are all here knows what the
6 issues are now and we will see what happens. Okay.

7 MASTER ESSHAKI: Your Honor, may I just request
8 that the objections be put in a formal motion and that a
9 formal response be replied? Right now I just have e-mail
10 comments so we need to formalize this in an objection.

11 MR. WILLIAMS: May I --

12 MR. KANNER: Certainly.

13 MR. WILLIAMS: May I suggest?

14 MASTER ESSHAKI: Please.

15 THE COURT: Mr. Williams.

16 MR. WILLIAMS: I think they submitted a letter
17 brief. I would suggest we respond to that letter brief,
18 treat that as an objection, and then that might help us
19 accelerate this process. Is that --

20 MR. CHERRY: Yes, we agree with that. I think
21 anything we can do to try to move this along.

22 MR. WILLIAMS: Because this is very important
23 and --

24 THE COURT: Okay. Let me be just concerned about
25 one thing because I'm always thinking about the docket too

1 because I like to see what's going on. It needs to be a
2 motion -- in the form of a motion so that it can get on the
3 docket and then have the resolution so that everybody can
4 look at it, that's one thing I just want to be sure,
5 everybody in any part can see what's going on.

6 MR. KANNER: Your Honor, Steve Kanner again.

7 That's certainly fine with us and we are happy
8 to -- as my colleague indicated, what we submitted was
9 essentially a letter brief. We will turn it into the formal
10 motion, and if Mr. Esshaki wants it briefed per se we are
11 happy to do that because we have already started the first
12 step.

13 THE COURT: Okay.

14 MR. CHERRY: I assume, can you do that within a
15 week?

16 MR. KANNER: I don't know.

17 MASTER ESSHAKI: With all deliberate speed?

18 MR. KANNER: With all deliberate speed. They spent
19 four months putting it together, it is exhaustive, and we are
20 trying to coordinate with the parties that would be impacted
21 by this. I have to agree with what Mr. Williams said, these
22 are non-parties, it is an --

23 THE COURT: Okay. Don't argue it here, that's
24 fine. Can we get a date?

25 MR. WILLIAMS: Yes, I would like a date, and I

1 would also like to request, I'm not sure it makes sense for
2 them to be coordinating with the recipient of these subpoenas
3 before this issue is resolved.

4 THE COURT: Mr. Esshaki, do you want a date to have
5 these motions?

6 MASTER ESSHAKI: Yes. I would like to set a
7 deadline for when the objections can be filed formally in a
8 motion and docketed, and the responses filed and docketed.

9 MR. KANNER: After consulting with my colleagues we
10 can do it in two weeks.

11 THE COURT: Okay.

12 MR. WILLIAMS: It seems extraordinarily long, Your
13 Honor.

14 MASTER ESSHAKI: It does to me too. I would
15 suggest you can do it in a week. It is in the letter
16 already, all you have to do is convert the letter into a
17 motion. Can we do a week, Counsel?

18 MR. KANNER: Yes, we will do a week.

19 MASTER ESSHAKI: Can we do a response in a week?

20 MR. KANNER: The brain trust has decided a week is
21 doable.

22 MASTER ESSHAKI: And a response in a week?

23 MR. WILLIAMS: Yes.

24 MASTER ESSHAKI: Do you want a reply?

25 MR. KANNER: We do, Your Honor.

1 MASTER ESSHAKI: Three days.

2 MR. FINK: A month.

3 MASTER ESSHAKI: Three days is accepted. Thank
4 you.

5 MR. FINK: I tried.

6 MR. CHERRY: Shall we schedule a hearing?

7 MASTER ESSHAKI: We can do that later, I don't want
8 to take up the Court's time on that.

9 THE COURT: Okay. The next issue kind of goes
10 along with the ruling on the protocol for coordination.
11 Counsel.

12 MR. RAITER: Good morning, Your Honor. I'm
13 Shawn Raiter on behalf of the automotive dealers.

14 There are two issues remaining open in our mind on
15 the deposition protocol, and we were prepared to argue those
16 today or talk about those. One is the number of automobile
17 dealer plaintiffs' depositions.

18 THE COURT: Okay. Wait a second. Is this not a
19 master issue? Has the master ruled on this?

20 MR. RAITER: We don't believe so, no.

21 THE COURT: Mr. Esshaki, what is --

22 MASTER ESSHAKI: Your Honor, I believe this is a
23 master issue, and I made an initial ruling, I think it was
24 revised, I made a subsequent ruling, I think we need to
25 revisit it. I think we are on the schedule today to do that

1 this afternoon or after this hearing problem.

2 MR. RAITER: And if that's what the Court believes
3 we will do it this afternoon, Your Honor. Thank you.

4 THE COURT: We will do it this afternoon.

5 MR. RAITER: Thank you.

6 THE COURT: The Court is trying very hard not to
7 interfere with the master. As I said, it is the first time I
8 have had a master and I don't want to interfere with him,
9 so --

10 MR. SPECTOR: Good morning, Your Honor.
11 Eugene Spector on behalf of the direct-purchaser plaintiffs.

12 There was another item included within the
13 subpoenas to the original equipment manufacturers, and that
14 is the subpoenas to the suppliers to those manufacturers. We
15 raised an issue as to whether, in fact, the subpoenas that
16 have been served should be held up, the service should be
17 stayed so that there can be coordination between the
18 defendants who have served those subpoenas and the end-payor
19 and auto-dealer plaintiffs who have an interest in the
20 information that is being sought for purposes of being able
21 to establish their pass-on issues.

22 All we are suggesting is that there should be
23 coordination. The subpoenas have been served, we haven't
24 seen objections, we haven't seen anything. We only know that
25 they have been served because of some of the communication we

1 have had back and forth with regard to this issue and once we
2 had received the notice our concern was that these absent
3 class members not be served with multiple subpoenas. The
4 defendants have coordinated amongst themselves, there is no
5 issue with regard to that, the only question is at some point
6 the end payors or the auto dealers may, in fact, want
7 additional information or other information and we thought
8 rather than have the suppliers go through a multiple subpoena
9 situation that it just be coordinated at this time like the
10 OEM subpoenas were coordinated. That's what we were
11 suggesting and that's what we have raised and why the issue
12 is on the agenda.

13 THE COURT: But not raised in a motion to stay
14 specifically these subpoenas?

15 MR. SPECTOR: No, no, no, not at this point. If we
16 need to file a motion we will but we thought we could try to
17 do this informally with Special Master Esshaki, and it got
18 onto the agenda along with the OEMs.

19 MASTER ESSHAKI: We would be glad to talk about it
20 later.

21 MR. SPECTOR: That's fine.

22 THE COURT: We will move that to Mr. Esshaki's
23 agenda later on.

24 I like that next issue, defendant liaison's
25 counsel. Mr. Reiss.

1 MR. REISS: Good morning, Your Honor. Will Reiss
2 for the end-payor plaintiffs again.

3 So we initially brought up the issue during the
4 status conference back on June 4th, 2014, and I believe the
5 Court was receptive to the idea of appointing at least one,
6 if not a group, of defendant defense liaison counsel, and at
7 the time we were dealing with the appointment of a special
8 master so we tabled the issue. We would like to revisit.
9 The case has grown more complicated; we now have 29 cases.
10 As my colleagues mentioned, we are trying to negotiate global
11 protective orders, other global documents, and it is
12 difficult for to us proceed ad hoc. I mean, in some
13 instances we found that counsel for a particular defendant
14 will be speaking just for that defendant in the action, and
15 other times it seems sometimes when it suits defendants'
16 convenience they will speak for multiple actions.

17 We, Your Honor, we need some certainty going
18 forward. There is not a significant burden on the part of
19 the defendants, we are just asking for one or a group of
20 defendants to help coordinate, lead us to the right person,
21 explain to us who is talking about what issues so we don't
22 have to guess and expend the class' resources trying to
23 figure out who we need to speak to about various issues.
24 Your Honor, we think that would be easy.

25 For example, I mean, Denso is a defendant in 18 of

1 these cases, I believe. Wilmer Hale represents another
2 defendant. That's 19 of the 29 cases one counsel represents
3 the vast majority of the defendants. Maybe another one or
4 two counsel from other firms are appointed and you will have
5 counsel for all the cases, so we think it is a very limited
6 burden on defendants and something that would be extremely
7 helpful for the plaintiffs in this case.

8 THE COURT: Okay. I would like to hear from -- all
9 right. Mr. Cherry?

10 MR. CHERRY: Since our name was invoked I will
11 speak.

12 THE COURT: All right. Mr. Cherry, let's hear what
13 you have to say.

14 MR. CHERRY: Your Honor, we don't believe there is
15 any need for some formal appointment of liaison counsel.
16 Most of the issues that come up in this case are very case
17 specific because we are moving forward on different
18 schedules. There's a lot going on in the wire harness cases
19 and the discussions are between counsel for the wire harness
20 defendants and the plaintiffs. I think bearings is trying to
21 move forward and they are talking to the plaintiffs, and
22 those are very case-specific issues.

23 On the few occasions where issues have come up that
24 are sort of broader, like there was a discussion some time
25 ago about the DOJ stay when that was initially entered, these

1 initial orders that the plaintiffs have requested -- actually
2 we initially requested and they responded to our request. We
3 have -- some of us that were interested in those issues have
4 come together, we have coordinated among ourselves, put
5 together the defendants' positions and responded to the
6 plaintiffs and done that. I think we have done a very good
7 job throughout this case, and the few times when there are
8 issues that cut across cases, to assemble a group of
9 defendants that are interested in those issues and to present
10 them and coordinate well with the plaintiffs, but there is no
11 need to -- to appoint some formal liaison counsel. That, in
12 fact, makes us less flexible in terms of putting together the
13 defendants who have a stake in that issue and who want to
14 participate in a discussion of it.

15 I'm not aware of any situation where somebody has
16 failed to do that or failed to tell the plaintiffs who they
17 are speaking for, tried to make that process difficult in any
18 way. We think we have done a great job of that, we plan to
19 continue to coordinate well among ourselves and with the
20 plaintiffs when it is appropriate to do so, and we don't
21 think there is any need for any formalization of that
22 process.

23 THE COURT: All right. I think I need to ask other
24 defendants if they have any comments on this.

25 MR. KESSLER: Your Honor, Jeffrey Kessler for NTN

1 from the bearings case.

2 I will just make a brief comment. The bearings
3 defendants completely agree with what was just stated, and
4 this is really just a solution looking for a problem. There
5 has been no situation that has come up in the three years of
6 the bearings case where there has ever been any issue
7 figuring out who to talk to, how to coordinate. For example,
8 we worked out our own protocols with the defendants in that
9 case; they raised it with us, we worked it out. The few
10 times there have been cross product issues there has been
11 defense counsel communication, those who were interested
12 participated.

13 As stated, I don't think plaintiffs can point to
14 one situation in the many years of this proceeding where this
15 has ever been a problem, so we very much think it would be a
16 problem to designate people here because the reality is the
17 29 different product groups have different interests, they
18 are different cases with different people, with different
19 problems, with different discovery things. So to charge
20 anyone saying you're responsible for those 29 cases, let
21 alone the fact that all the defendants in the case don't
22 always agree so it is not even 29, it is 29 with like 60
23 companies to represent, it simply is not possible and it is
24 not needed most importantly, Your Honor.

25 THE COURT: Wait a minute. Let me hear from

1 defendants first so I get --

2 MR. REISS: Good morning, Your Honor. Steve Reiss
3 from Weil, Gotshal & Manges. We represent Bridgestone in the
4 anti-vibration rubber parts and Calsonic Kansei in the
5 radiators case.

6 I completely agree with the comments that
7 Mr. Kessler just made. I have two clients in two separate
8 cases and their interests are often not the same, and having
9 a small number of liaison defense counsel --

10 THE COURT: You're representing defendants who have
11 conflicts with each other?

12 MR. REISS: No, no, no, we would never do that,
13 Your Honor.

14 THE COURT: That's on the record.

15 MR. REISS: You have to give me a chance to expand.
16 Their interests are not always the same, it doesn't mean they
17 are in conflict. For example, one client may have an
18 interest in more expeditious resolution of certain issues
19 than another client, may have different issues with respect
20 to scheduling, and those are issues that are not conflicts
21 but they have different views of how litigation ought to
22 proceed, and that is exactly why those kinds of strategic
23 decisions about how this litigation ought to proceed are
24 exactly why you can't have one person or one small group of
25 people representing all of the defendants. It makes no

1 sense, and I agree this is a solution that makes no sense.

2 MR. TUBACH: Your Honor, Michael Tubach. I
3 represent Leoni in the wire harness cases.

4 I just wanted to echo the comments of Mr. Cherry
5 and Mr. Kessler. I think it is entirely unnecessary to have
6 a defense liaison counsel. I just wanted to make sure you
7 heard from the chorus before you heard from Mr. Williams.

8 THE COURT: I take it there is no defendant who
9 supports plaintiffs' position in this?

10 MR. TUBACH: The jury is unanimous, Your Honor.

11 THE COURT: Okay.

12 MR. WILLIAMS: Your Honor, I just wanted to respond
13 briefly to Mr. Kessler's comments that he didn't think there
14 had ever been an instance where this has come up. That's not
15 true. The deposition protocol that we are going to discuss
16 with the master this afternoon, six months ago at least we
17 sought to engage all the defendants in that discussion and
18 that's what it has now evolved to, and we are told, no, we
19 are only speaking for wire harness, we won't speak for anyone
20 else, you have to go and find them all separately and talk to
21 them.

22 Now after the last hearing, in fact, the
23 negotiations have become engaged in by one counsel
24 communicating to the plaintiffs on behalf of all the
25 defendants. I think the point is no one is forcing strategic

1 decisions or forcing anyone to give up the right to make
2 decisions on behalf of their client, but there are certain
3 things that are overarching that apply across the board in
4 this MDL that can be done. So defendants aren't going to
5 fight with each other within one case about a deposition
6 protocol. We have templates and it has been done and we
7 certainly don't think that has to be done over and over
8 again, and there are many things for which a point person
9 accelerates communications. So no one is having their right
10 to represent their client as they see fit taken away, we
11 would just prefer and we think the Court would benefit from a
12 point person for overarching issues that do apply broadly to
13 this MDL.

14 MS. SULLIVAN: Your Honor, Marguerite Sullivan from
15 Latham & Watkins on behalf of the Sumitomo defendants.

16 The dispute about the deposition protocols I won't
17 get into the details because we heard you loud and clear that
18 that's Master Esshaki's issue, but it is actually a perfect
19 example of Mr. Cherry's comments about how when we need to
20 work together and when it makes sense to work together we do
21 so.

22 On March 19th Master Esshaki ordered that the
23 defendants and all parties actually meet and confer to
24 develop a deposition protocol that covered end-payor
25 plaintiffs and auto-dealer plaintiff witnesses, and so we

1 have done that. So that's an instance where following his
2 ruling we got together and one of us spoke on behalf of all
3 the defendants, we negotiated a protocol and we are in the
4 process of finalizing that, and we will need to work through
5 some of the remaining disputes with Master Esshaki.

6 But there is a wire harness deposition protocol
7 that does not cover depositions that are in all of the auto
8 parts cases, that addresses depositions that are going to
9 occur in the wire harness case, that is a separate issue
10 altogether and with respect to that protocol it is not
11 appropriate to have other defendants in other cases involved
12 in those negotiations, that is a wire harness specific
13 protocol and the wire harness defendants will work with the
14 plaintiffs on finalizing that protocol.

15 THE COURT: Okay. All right. I mean, listening to
16 the parties I don't hear right now that there is a need for
17 this liaison. I think it is an interesting issue because
18 when I wanted something with defendants but it all had to do
19 with the technology, and Mr. Iwrey was called -- we contacted
20 him or he volunteered to be on the committee, but as things
21 come up I think that you can work amongst yourselves. It
22 sounds like some of these matters that were brought up that
23 the defendants worked it out without a liaison counsel, so
24 I'm not going to appoint a liaison counsel -- or a liaison
25 counsel group, I should say, because we would never have just

1 one, but I'm not going to do that right now. If it, in fact,
2 becomes a problem and, Mr. Esshaki, if you would simply let
3 me know if there is -- it becomes a problem and there needs
4 to be a subgroup then I will reconsider this matter and you
5 could ask the parties to put it back on the agenda, but I
6 need more than what I have heard before I would appoint such
7 a group.

8 Okay. The next item on the agenda is the wire
9 harness, that's a ruling on issues not resolved by the
10 parties on order of Special Master. We have no objections
11 right now, do we?

12 MR. WILLIAMS: Well, I was just going to ask, I
13 will ask Ms. Sullivan, it seems this is something now that we
14 are going to address with the master.

15 MS. SULLIVAN: That's correct. That's my
16 understanding is that Master Esshaki ruled on our motion for
17 clarification on March 19th, there have been no objections to
18 that. I think there was a misunderstanding and the auto
19 dealers believed the Court was also going to rule on that
20 motion, but based on what you said this morning I don't
21 believe that that is the case, so we will meet with
22 Master Esshaki this afternoon and finalize -- or work through
23 our remaining disputes.

24 THE COURT: Okay.

25 MR. WILLIAMS: And I have to say I don't speak for

1 the auto dealers, I'm not sure they would agree with the
2 characterization, but my understanding is all of this is
3 going to be discussed with the master.

4 THE COURT: Counsel?

5 MR. RAITER: Shawn Raiter on behalf of the auto
6 dealers.

7 We do not agree with Ms. Sullivan's
8 characterization that there was a ruling on these issues.
9 There are a number of issues that are open, and while there
10 was a preliminary order that said we need to meet and confer
11 to come up with the protocol, there still isn't a protocol.

12 THE COURT: No. I understand that there may not be
13 a protocol but that's going to be developed through the
14 master -- or with the master.

15 MR. RAITER: And there are a number of issues that
16 the parties have generally reached agreement on on some of
17 the subtopics but there are some very major issues that
18 remain open that need to be either agreed upon or ruled upon
19 by the Special Master.

20 THE COURT: Okay. Thank you. You will, I'm sure,
21 today or through motions bring those to the master's
22 attention?

23 MR. RAITER: Yes, Your Honor, we will.

24 THE COURT: Okay. The next issue is class
25 certification and discovery schedules for Rush Trucks and

1 City of Richmond.

2 MR. SQUERI: Good morning, Your Honor.

3 Steven Squeri from Jones Day on behalf of Yazaki.

4 Your Honor, at the January conference before the
5 Court -- the January hearing before the Court, the Court
6 instructed or indicated that you wanted us to get the Rush
7 Truck case on the same track as the other wire harness cases,
8 and we have done as instructed. Your Honor, I just wanted to
9 state preliminarily that defendants have done so without
10 prejudice to our motions to dismiss that we are expecting to
11 file later this week. We believe that those are good serious
12 motions, but we also wanted to accommodate the Judge's
13 instructions that we move forward and get Rush Truck on the
14 same plan.

15 What we have done is we've met with the Rush Truck
16 plaintiffs on several occasions, we have exchanged drafts,
17 and I'm pleased to report, Your Honor, that we have been able
18 to arrive at a mutually agreed upon discovery plan which
19 essentially places -- is intended to get them on the same
20 track with the other automotive wire harness cases so that --
21 we have already provided them documents, we have talked about
22 how we are going to address depositions. And the actual plan
23 itself I believe has already been filed or will be filed
24 today with the Court, we were able to basically put aside the
25 remaining issues last night and this morning and we are ready

1 to move on it, but that will be presented to the Court very
2 shortly if it hasn't already been filed.

3 THE COURT: Very good. Wonderful. Thank you.

4 MR. SPERL: Your Honor, this is Andrew Sperl
5 representing rush trucks.

6 Just to second what Mr. Squeri reported, my
7 understanding is that my colleague, Mr. Parkes, gave consent
8 today to have the discovery protocol filed so that should be
9 filed very soon, and we are pleased to report we had a
10 productive meet and confer process with defendants on this.

11 THE COURT: Wonderful. Thank you.

12 MR. SPERL: Thank you.

13 MS. QUADROZZI: Good morning, Your Honor.
14 Jaye Quadrozzi on behalf of City of Richmond.

15 Your Honor, we were involved in discussions along
16 the same line in terms of getting on the same page with
17 respect to discovery. We received Your Honor's order with
18 respect to the motion to dismiss, and we are in the process
19 of discussing the implications of that order with the various
20 clients, and so we need to do that before we proceed any
21 further.

22 THE COURT: Okay. Do you think -- how long would
23 it take you to do that, let me ask you that?

24 MS. QUADROZZI: In short shrift, whether or not we
25 are able to accomplish it in a week or ten days, that's sort

1 of the time frame we are looking at.

2 THE COURT: Okay. And then you will --

3 MS. QUADROZZI: To the extent that there was issues
4 with respect to the discovery protocol, we would bring those
5 to Master Esshaki, and then objections to the extent they
6 existed would come to Your Honor.

7 THE COURT: All right. Thank you.

8 MS. QUADROZZI: Thank you.

9 MR. SQUERI: Your Honor, if I could just comment on
10 that briefly?

11 I understand that my co-counsel has been in contact
12 with counsel for the City of Richmond about setting up at
13 least conference calls for the purpose of trying to get at a
14 discovery plan which we would anticipate would be very close
15 to what we have done in Rush Truck. The only difference
16 would be is that unlike Rush Truck where there is a class
17 cert briefing schedule, given the current status of the City
18 of Richmond case there would not be such a briefing schedule,
19 but as far as we are concerned it makes all the sense in the
20 world to get them on the same schedule to avoid duplicative
21 depositions and unnecessary duplication of discovery, and we
22 are prepared to do that forthwith.

23 THE COURT: Yes, that would be excellent if you
24 could coordinate those dates, okay, and I think you will be
25 able to. I don't think it is going to take that long for

1 you -- as you said, it might be a week or so to deal with
2 your clients.

3 MS. QUADROZZI: Yes, Your Honor.

4 MR. SQUERI: Your Honor, while I am up here would
5 you mind my jumping ahead two places on the agenda because it
6 is related to what we were just discussing?

7 THE COURT: Okay.

8 MR. SQUERI: That is with respect to the Rush Truck
9 motions to dismiss and the argument on those motions. The
10 parties have agreed to a briefing schedule. As indicated we
11 will be filing those motions later this week, the briefing is
12 expected to conclude on August 28th, and then we have a
13 conference with the Court on September 9th, I believe, is the
14 date.

15 THE COURT: Right.

16 MR. SQUERI: I don't know whether or not that would
17 be sufficient time for the Court to consider those motions,
18 we are anxious to have them heard, if not we would suggest
19 that perhaps we schedule a hearing date a few weeks -- a
20 couple of weeks or so down the road.

21 THE COURT: Your briefing will be done August 28th,
22 and we are scheduled September 9th.

23 MR. SQUERI: Yes. I understand and I expect, Your
24 Honor, that it is going to be extensive briefing based on
25 what my colleagues have shared with me, so what we are

1 suggesting is if the September 9th hearing on the motions
2 does not work we would like to see if we could have a special
3 hearing date set for sometime in the latter part of September
4 in order to try to get those motions heard particularly since
5 we have discovery going on in parallel with those -- with the
6 motion.

7 THE COURT: Okay. We probably will end up with a
8 special hearing date, it just depends on what other motions
9 are filed. If we end up with another dozen motions then it
10 would be very difficult to get yours in. If we end up with
11 not that many ready to go and we could spend the whole week
12 just on your motion, that would be great, so I don't know
13 yet.

14 MR. SQUERI: Understood, Your Honor.

15 THE COURT: But I could understand why you wouldn't
16 want to wait until the next date. Okay. Would you
17 indicate -- I guess I would ask all of you to indicate if you
18 could when you file whether oral argument is required. Okay.
19 Counsel?

20 MR. SPERL: We simply defer to the Court's
21 scheduling of the argument.

22 THE COURT: Okay. Thank you. The Ford action.

23 MS. LEIVICK: Good morning, Your Honor.

24 Sara Leivick for Ford Motor Company.

25 Your Honor, Ford and the Fujikura defendants have

1 agreed upon a discovery schedule in the Ford action and we
2 submitted a proposed stipulated order to Your Honor, and we
3 would just request respectfully that Your Honor enter that
4 proposed order.

5 THE COURT: Okay. You submitted it to my clerk
6 already?

7 MS. LEIVICK: Yes, Your Honor.

8 THE COURT: Okay.

9 MS. LEIVICK: Thank you.

10 THE COURT: Plaintiffs' motion to amend on the
11 bearings case.

12 MR. HOESE: Your Honor, William Hoese, H-O-E-S-E,
13 with Kohn, Swift & Graf.

14 We recently filed a motion for leave to amend the
15 bearings complaint. We provided it to the defendants on
16 April 8th. As they foreshadowed for us in the earlier
17 discussions, they have objected to it and have filed a motion
18 in opposition. I do want to point out initially that
19 according to their own schedule that they have been
20 proposing, and my partner, Mr. Kohn, will address that next,
21 they provided for motions for leave to amend being filed by
22 March 30th, 2015, so even in their own schedule that they are
23 presenting is somehow amending this complaint would interfere
24 with, they provided for motions for leave to amend and I
25 understand the Court has final say.

1 THE COURT: Wait a minute. I don't have -- you
2 have plaintiffs' motion to amend complaint and then they
3 filed a motion?

4 MR. HOESE: They filed a -- pardon me, Your Honor.

5 THE COURT: A response to your motion?

6 MR. HOESE: They did, that was filed yesterday, and
7 they raised certain objections to it that if Your Honor would
8 like me to address this morning?

9 THE COURT: No, no, I don't need the objections.

10 MR. HOESE: I would like to address their
11 objections now and we can short circuit the reply briefing
12 and things like that, if I could tell you why we think their
13 objections are misguided and that the Court should, in fact,
14 grant our motion.

15 Essentially what the defendants would propose is we
16 have added -- we propose to add a number of subsidiaries of
17 current defendants who have pled guilty to or whatever the
18 procedure is in Europe to in part of a bearings conspiracy.
19 Also we were provided information only after the argument on
20 the initial motions to dismiss, this was important, new
21 information, it was unknowable to us at the time, we have
22 those materials, we had to evaluate them, consider how they
23 could be integrated into a complaint, which we have done,
24 and --

25 THE COURT: Okay. Let me ask you, you are

1 proposing to -- I haven't read any motions and we didn't get
2 a reply so that's why I'm asking you.

3 MR. HOESE: All right.

4 THE COURT: You're saying that your motion is to
5 add the subsidiaries who have pled guilty in the proceedings
6 but you have to look at what papers, what are you saying?

7 MR. HOESE: Oh, no, Your Honor, I was explaining --
8 one of the things they do is complain about the fact that we
9 didn't do this earlier. In addressing that objection by the
10 defendants to allowing us to amend the complaint, I wanted to
11 explain to the Court what was going on with the plaintiffs in
12 obtaining this new information or being provided to them and
13 the process that we had to go through, which is why we
14 integrated all of this into our amended complaint. Their
15 proposal is to essentially have us file two new complaints
16 which would then be consolidated and presumably then the
17 original case would go forward and these cases would go
18 forward and I just don't see how that would be more efficient
19 for the defendants or the Court to file two new complaints
20 when we can integrate this all into a single complaint which
21 can be slotted into any schedule that is ultimately agreed
22 upon by the parties.

23 There are other things that they provide, I
24 understand you haven't had an opportunity to read all the
25 papers, but they are real Janus faced about their argument;

1 on the one hand they claim we are delaying things and that
2 this delay would prejudice them, on the other hand what they
3 have said in their papers is well, you are going to sue these
4 foreign subsidiaries of ours, well, we are not going to
5 accept service so you have to do Hague service. Originally
6 they all accepted service of process and got the case moving
7 along more speedily. They could rescind their objection and
8 let us file it understanding that the Court has the final say
9 about whether or not they would allow it. Third, they could
10 provide us the documents -- the DOJ documents, and, again, as
11 I left the office yesterday my understanding is that it was
12 only one -- I could be wrong so I don't want to say but only
13 one of the defendants that had promised to provide these
14 documents to us by April 28th, and that only one had provided
15 them and I think one may have asked for an extension.

16 Our schedule suggests actually a speedier -- to get
17 the transaction data, to get these other materials to us and,
18 again, as Mr. Kohn will describe to you, we have kind of a
19 middle ground on the schedule but all of the new defendants
20 would be integrated into this schedule, whatever schedule is
21 ultimately agreed on, without causing undue delay or any
22 prejudice that I could see to the defendants so --

23 THE COURT: But you either add them to this
24 complaint or you sue them separately?

25 MR. HOESE: Well, that's the defendants' proposal,

1 right, which we would do that, yes, Your Honor, if that were
2 the case we would do that.

3 THE COURT: Let's hear from the defendants.

4 MR. HOESE: Thank you, Your Honor.

5 MR. KESSLER: Good morning, Your Honor.

6 Jeffrey Kessler again for the NTN defendants, and I will
7 address this.

8 I'm sorry, Your Honor, we didn't know that they
9 were going to raise their right to file a reply brief so that
10 this was up, but I'm happy to address right now.

11 THE COURT: I didn't either. We did not get a
12 reply brief.

13 MR. KESSLER: But let me take a minute to explain
14 what the amendment is for Your Honor's benefit since I know
15 you haven't had a chance to read the papers and why we are so
16 strongly opposed to it.

17 This amendment does not simply add new information
18 that came out somehow and they just want to add that, there
19 is a little bit of that in the complaint but that's not the
20 basis of the objection. What it does is, first of all, it
21 adds an entirely new defendant, Minebea, who recently had a
22 plea that has nothing to do with the issues in this case.
23 Okay. They are a small bearings manufacturer that entered a
24 plea about bearings that go into things like ATM machines and
25 toasters. Okay. Nothing to do with auto parts. This is

1 called the auto parts MDL, nothing to do with auto parts,
2 nothing to do with the industrial bearings that have also
3 been raised in our case, and this should be a separate case
4 if it is one against Minebea. Okay. So it has nothing to
5 do -- they are not related to any of the other defendants,
6 the other defendants says when you look at the DOJ's
7 discussion of this at the sentencing hearing it had nothing
8 to do with this case, these allegations, the two pleas that
9 are in this case completely unrelated. Now we are going to
10 come back why are they doing it, why are they putting it
11 together other than the fact it's a metal-coated bearing but
12 I will come back to that.

13 The second thing it does is it adds a group of
14 European defendants, some of whom the Court has previously
15 dismissed in other context for lack of personal jurisdiction.
16 Okay. And all of these new European companies may not be
17 here, I don't know if it is true for all of them, but many of
18 them would have personal jurisdiction arguments regarding
19 this. And the reason they are adding them is one year ago --
20 I want to emphasize that, Your Honor, one year ago the EU
21 entered a final resolution consent decree in the bearings
22 industry which included these European companies, so one year
23 ago they could have moved to add them if they wanted to do
24 this, and I will talk about the significance of waiting for
25 this now. So it would both add an entirely unrelated case,

1 okay, because the new small bearings will now require
2 discovery of ATM makers, small appliances, medical devices,
3 all these things that have nothing to do with our matter, and
4 the foreign defendants, some of them already have prevailed
5 before Your Honor on personal jurisdiction, are likely to
6 have a group of new personal jurisdiction motions which as
7 Your Honor knows takes a long time to resolve, they may seek
8 discovery just on that, and doing that.

9 So the question is Rule 15 is liberal but it is not
10 unlimited. Liberal does not mean unlimited. And so the
11 question is what are the limitations that the courts have
12 recognized, and this is all in our brief, Your Honor, I am
13 sorry for repeating it but you haven't had a chance to read
14 it yet. So what the courts say is look at two very important
15 factors. First, has there been diligence on the part of the
16 plaintiffs, have they waited too long? Well, this is a
17 three-year-old case, I want to emphasize that, a
18 three-year-old case where they knew about the foreign
19 companies in the EC decision a year ago, and the Minebea one
20 doesn't belong in this case, and so the question is seven
21 months ago when Your Honor denied the motions to dismiss the
22 direct purchaser counsel came to us right at that hearing and
23 said will you consent now to a motion to amend, and we said
24 well, could you tell us what it is, we want to know what it
25 is. They wouldn't tell us in advance so we didn't consent,

1 but that was seven months ago even on that schedule, so there
2 is no explanation that could justify this delay.

3 Now, if it was just delay you would say well, okay,
4 is it no harm, no foul, because the other factor is prejudice
5 to the defendants. What I'm going to tell you, Your Honor,
6 is the delay has caused severe prejudice to these defendants
7 if you are to allow this. What is the prejudice? The
8 prejudice is the second item on this agenda. The second item
9 on this agenda for hearings is that we are going to be
10 pleading with Your Honor, and I mean pleading when we get up
11 on this, to please set July 2016 consistent with Your Honor's
12 admonishment last time that the cases should move forward to
13 be decided for a date of filing the class certification in
14 hearings. We think that is critical to move this case
15 forward. It will allow Your Honor to decide class
16 certification five years after the complaints have been
17 filed, which is hardly extraordinary expedition. We think
18 this is crucial in terms of the interest of our clients and
19 we think the federal rules entitle us to that.

20 They didn't file these amendments, Your Honor, I'm
21 not going to cast stones but I'm going to say the facts,
22 until after we raised this scheduling request and they
23 started to say no, no, no, we can't move on that schedule
24 with you and the indirects said you should coordinate it with
25 five other groups of parts people, we want you all together,

1 we can't move that fast, we don't want to do this suddenly
2 after telling us seven months ago there is going to be a
3 motion to amend. Well, what drops on our desk? A motion to
4 amend that includes a company Minebea that has no conceivable
5 relationship to this case and these foreign defendants they
6 knew about a year ago. So what is the result of what they
7 have done if this were granted? It is going to make it
8 impossible or near impossible for us to get the expeditious
9 consideration of this case, and I use the word expeditious,
10 Your Honor, mildly, it would be five years that we are
11 entitled to, that's exactly when Rule 15 says you don't grant
12 the motion for leave to amend. So, yes, in Minebea they
13 should file a separate action if they want to do that; it is
14 a separate plea, it is a separate part, it becomes number 30,
15 it should be number 30 if there is going to be one.

16 With respect to the foreign defendants, there is no
17 excuse for waiting the year. Now, I don't know if they want
18 to file a separate case against them or not, they could and
19 then their personal jurisdiction motions can play out over
20 the next six months or whatever they are going to in that
21 case, that's up to them, I frankly don't think they need any
22 of those companies and that the only reason they have added
23 those companies, they have plenty of companies here in the
24 bearings case, is really just for the delay that this will
25 do. Your Honor, we think for all of these reasons this is a

1 classic case where other courts in this circuit which we have
2 cited to you, both district judges and at the circuit level,
3 would say this is why Rule 15 exists and why the rule is not
4 like you get to amend once as of right, you don't get to
5 amend again when these factors are present. Thank you, Your
6 Honor.

7 THE COURT: Mr. Reiss?

8 MR. REISS: Hi, Your Honor. Will Reiss for the
9 end-payor plaintiffs.

10 We, similar to the directs, filed a motion to
11 amend. We haven't received an opposition from the defendants
12 yet, hopefully maybe we won't get one, although I suspect we
13 will. I want to point out one important distinction. Our
14 case is limited to automotive bearings and so similar to the
15 defendants we added Minebea as a defendant but only as to
16 automotive bearings. So with respect to Minebea, this new
17 party, we just learned about a guilty plea I believe it was a
18 couple of months ago, it is part of the case, it fits within
19 the case. Clearly if Minebea wants to file a motion to
20 dismiss and contest their allegations they are welcome to do
21 so, but to have other defendants come in and take up
22 arguments for another defendant they simply don't have
23 standing to do that.

24 With respect to some of the additional information
25 we pleaded, we received confidential information several

1 months ago that we added to our complaints. We wanted to be
2 prudent, we wanted to wait to file our amended complaints
3 until we had sufficient and additional information so they
4 weren't required to do it piecemeal. I'm hearing a lot from
5 defendants about prejudice but let's talk about where we are
6 in the case. As I understand it I think the stay in hearings
7 ended three months ago. We don't have any documents, we just
8 started I think, as Mr. Hoese pointed out, we got the DOJ
9 documents from one foreign defendant in hearings so it is not
10 as if defendants have started producing documents and busy
11 preparing for this case, they haven't produced a single
12 document and nothing precluded them from doing that. So we
13 are in a position now where there is no prejudice.

14 To the extent there are foreign subsidiaries that
15 we have added to the complaint, defendants can simply agree
16 to accept service as they should and we can move forward. If
17 they want to file a personal jurisdiction motion we can
18 resolve that expeditiously. We have done it, Your Honor, in
19 wire harness. We learned --

20 THE COURT: Let me ask you a question, what are you
21 adding beside the foreign subsidiaries and the other company?

22 MR. REISS: For instance, Your Honor, there --

23 THE COURT: What are you amending?

24 MR. REISS: There were some guilty pleas that we
25 learned about subsequent to the filing of our last complaint,

1 so we have expanded --

2 THE COURT: For parties already in the case?

3 MR. REISS: For parties that are already in the
4 case, and we have expanded the class period to account for
5 that because the guilty pleas predated what we had initially
6 thought the class period was, we have added new defendants,
7 we have included some additional facts, just background facts
8 that don't affect anything.

9 THE COURT: All right. Just a minute. Could you
10 respond as to those issues, I'm not talking about the foreign
11 subsidiaries?

12 MR. KESSLER: Or Minebea.

13 THE COURT: Yes. What is the name of that?

14 MR. KESSLER: First of all --

15 THE COURT: Spell that company you are talking
16 about.

17 MR. KESSLER: M-I-N-E-B-E-A. That's the other
18 unrelated company.

19 THE COURT: Okay.

20 MR. KESSLER: With respect to the guilty pleas, it
21 is true I believe about one year ago -- how long ago was the
22 guilty plea?

23 MS. KAFELE: 2013.

24 MR. KESSLER: 2013, Your Honor, two years ago there
25 were guilty pleas which Your Honor I believe addressed in

1 your decision in 2014 that discussed the fact that two of the
2 defendants in this case entered into guilty pleas which had a
3 different period of time than was originally in their
4 complaint. They could have two years ago moved to make that
5 allegation. In any event, the period of time is classically
6 something where the pleadings are going to conform to the
7 proof anyway, they don't have to amend if it turns out they
8 have a longer period of time, so that's not the controversial
9 issue here in terms of that but they could have done that two
10 years ago if they thought there was a legal and important
11 reason for them to do that. It wasn't, Your Honor, from some
12 secret information they got from somebody, it was in the
13 public record two years ago.

14 Second, Your Honor, they made the very strange
15 statement that they couldn't get any discovery for the last
16 two years because of the stay. As Your Honor knows, this
17 stay was very carefully negotiated to permit them to do full
18 transactional discovery and other related class discovery the
19 entire period of time.

20 THE COURT: Okay.

21 MR. KESSLER: And they sought nothing, Your Honor,
22 during that time. That's my point.

23 THE COURT: That's enough. I'm not going to allow
24 you to amend your complaint. You may file other cases, but I
25 think we are going to proceed with the bearings case and we

1 are going to proceed with your class cert, you are going to
2 have to do a schedule as indicated.

3 MR. KESSLER: Your Honor, let me just address that.
4 What I think Your Honor should decide on that is the
5 following: If you agree that July 2016 is the correct end
6 date for the class certification motion, because that's the
7 big dispute, that's when they would file. We could -- there
8 may be other disputes, we proposed interim dates, we are
9 happy to work out all interim dates with them or with the
10 master, that would seem too detailed for Your Honor. What we
11 would need from you is the date for filing should be
12 July 2016, which we figure that's more than 14 months from
13 now, it is a very long time for them to do what they need to
14 do. Number two, that we get our own class certification date
15 where obviously we don't want to wait to coordinate, other
16 parts may have other issues and other desires, we shouldn't
17 be there.

18 By the way, the direct purchasers agree with that,
19 only the indirects have said no, we would like you to wait
20 until you coordinate and come up with a proposal with five
21 other parts groups, which we don't think is appropriate.
22 Their rationale is some of those groups have cases filed
23 first but Your Honor knows very well it is not like it is a
24 grocery store where who has the earlier docket number moves
25 on a certain schedule, it depends on which case is ready,

1 that's how all cases work. This isn't even as Your Honor
2 notes an MDL for our cases, they are just related cases
3 before Your Honor is how they have been filed at least for
4 the later parts like ours, so we need that.

5 And then the third point of all of this, we would
6 like the directs, the indirects and rush trucks, who are the
7 same all seeking class to all be on the same schedule. Those
8 are the only three things we think we need Your Honor to
9 address, and then if there are interim date issues we have
10 made a proposal, they would have certain changes, we propose
11 giving them 11 months for our transaction documents to review
12 before class certification, maybe they want 12 months, which
13 they seem to say they need a year, that's certainly not
14 anything Your Honor has to worry about; if we have a dispute
15 on that we can work that out with the Special Master.

16 THE COURT: Why shouldn't the master determine this
17 when he's going to have the information on the discovery that
18 is necessary?

19 MR. KESSLER: Your Honor, we actually presented
20 this to the master so I will let him speak to this because he
21 wrote back a letter to us saying he thought that the main
22 issue of the date of filing was your schedule and he did not
23 feel it was appropriate that he would express a view on your
24 schedule of that, so that's why we are here with this issue
25 but we did try to present it to the master.

1 MASTER ESSHAKI: That's accurate.

2 THE COURT: Mr. Esshaki, I'm sorry, I can't hear
3 you.

4 MASTER ESSHAKI: They provided me with a letter
5 asking me to adopt the July 16th class certification deadline
6 and adopt the schedule in the wire harness case for their
7 case, and I indicated to them that I felt the decision of
8 whether the class certification motion should be set for
9 July 16th and that they track with the wire harness case is
10 your style decision.

11 THE COURT: Okay.

12 MASTER ESSHAKI: I can deal with discovery disputes
13 and discovery schedules, but whether this should be set for
14 certification with wire harness schedule really I believe was
15 your decision to make.

16 THE COURT: Okay. But the issue of discovery you
17 don't have any issues -- there is no reason --

18 MASTER ESSHAKI: I have no problem.

19 THE COURT: -- that you know of at this point why
20 that date cannot be met, I mean, it seems like an awful long
21 way away?

22 MASTER ESSHAKI: Your Honor, let me just point out
23 one other thing and I think this has general application.
24 The issue came to me via a letter, and this is the second or
25 third time I have received a letter asking me to intervene on

1 something, and truly it needs to be -- all of this needs to
2 be filed in formal motions so there is a court record, a
3 motion, a response, a reply, and then I can get involved and
4 then we will have it papered in the docket and the ruling
5 will be papered in the docket, so letters just I've got to
6 ignore.

7 MR. KESSLER: Let me apologize for that. We
8 misunderstood your rules as saying you wanted letters for
9 scheduling issues, and we interpreted that to mean this type
10 of matter should be presented this way but we now understand
11 that you would like a motion for that and we obviously could
12 immediately convert that.

13 But in any event, Your Honor, I think the master
14 agrees we need you to set the date and then any interim
15 issues we could certainly work out. I hope we'll be able to
16 work -- I think once we have the date we'll be able to work
17 it out, but if not we'll go to the master.

18 THE COURT: Let me hear from the plaintiffs before
19 I decide on this.

20 MR. REISS: Your Honor, with the Court's
21 permission, if I could just address very quickly the
22 amendment issue, and I respect the Court's opinion that you
23 are not permitting us to amend to the extent it prejudices
24 defendants, but I would ask the Court's permission for a
25 limited amendment for two issues, one, for the end-payor

1 plaintiffs to add Minebea. Again, our claims as to Minebea
2 are just limited to auto parts so there should be no
3 prejudice --

4 THE COURT: No, it is a separate defendant and we
5 are going to do that separately, and if that's all it is
6 there will be a motion and we will handle it, but I don't
7 want to delay the main bearings case defendants.

8 MR. REISS: So just to clarify, when you say a
9 separate --

10 THE COURT: You will file a separate complaint.

11 MR. REISS: A separate individual complaint that
12 would name just Minebea?

13 THE COURT: Yes.

14 MR. REISS: And then with respect to the class
15 period reflecting the guilty pleas that we learned about
16 several months ago, again, no prejudice to defendants in that
17 situation, they haven't produced any documents, this now
18 reflects their guilty pleas. Could we be permitted to amend
19 the complaint to at a minimum reflect this extended class
20 period, as I said, reflects the facts that we have learned
21 about in their guilty pleas with no prejudice to them?

22 THE COURT: Do you need an amendment to do that?

23 MR. REISS: Again, I think it frames discovery, I
24 think it frames what the issues are so defendants can defend
25 their case and we can proceed and litigate our case as we

1 understand it.

2 THE COURT: So you would like to amend simply to --
3 excuse me, yes, to amend?

4 MR. REISS: Simply to extend the class period to
5 reflect the information we know as to the guilty pleas.

6 THE COURT: Okay.

7 MS. SALZMAN: Your Honor, Hollis Salzman for the
8 end payors.

9 To respond to the motion for discovery schedule in
10 bearings, a couple of things, Your Honor. One is we think
11 that the schedules should be set forward in all of the cases,
12 not -- right now we have wire harness schedule, we need to
13 have schedules in all of the other 28, 29 cases.

14 THE COURT: Not at the same time you are saying?

15 MS. SALZMAN: Well, it was my understanding that
16 your court was looking -- we set wire harness out, wire
17 harness has been already speeding through discovery, we have
18 gotten the documents, we are close to taking depositions.
19 There are many other cases that may want also a July 2016
20 date. In fact, we were just contacted by counsel for the
21 AVRP defendants who also want that date. So we are taking a
22 more global -- this is an MDL, we are taking a more global
23 look at what is going on, and what we propose is that the
24 parties or a subset of the defendants' parties sit down
25 either with the Special Master or not to bother the Special

1 Master but to come up with a schedule of perhaps groupings.

2 So we have wire harness, that's the first one out
3 of the gate, that will give Your Honor an understanding, a
4 taste of what the class certification proceedings are going
5 to look like in these cases, and then set not with a huge
6 difference in between but to set some kind of space between
7 wire harness where we will all have gotten a level of
8 learning curve, and then set the next group of cases. So it
9 wasn't that we were insisting that it has to be the next
10 eight out of the gate in terms of filing date, that made the
11 most sense to us because those are the cases that are further
12 along in discovery.

13 The bearings defendants have come to the Court
14 saying this is unfair, we have to rush, it is, you know, we
15 are being prejudiced, meanwhile they have not -- although
16 there was a DOJ stay they were certainly more than able to
17 produce voluntarily discovery to us. They never produced one
18 document except for the amnesty applicant who produced a very
19 small number of documents to us and that was only last
20 summer. In addition, the DOJ documents which they now say
21 they are going to produce to us are already late, we've only
22 gotten them from one of the defendants. These defendants
23 have already gathered these DOJ documents, they have them in
24 their possession and they have yet to give it to them, so for
25 them to come in and claim, oh, we are late, we are late,

1 things aren't speeding, it is not right and --

2 THE COURT: Okay.

3 MS. SALZMAN: So my proposal is that we come up
4 with a plan for the Court to carefully --

5 THE COURT: I can tell you something now, and I
6 know defendant can argue all you want, but I will tell you I
7 want to get a grasp on these class certs, and I set wire
8 harness because it was the first one and I thought it would
9 be ready, I'm sorry it is so far out, but I did agree to
10 that. Okay. I want to do wire harness first. I want to
11 know what's -- how to handle this best and I don't really
12 have the staff or the time to deal with multiple parts class
13 cert, so I can tell you now I'm going do the wire harness
14 alone first. That's just -- that's all I can handle at one
15 time. I think the others will go much faster once I have
16 that and once we all have that under our belt, we will see
17 how it is going. This is not to prejudice any defendants
18 that are waiting or any plaintiff classes that are waiting,
19 but we are going to go with wire harness.

20 MS. SALZMAN: I just suggest, Your Honor, if you
21 would indulge the parties, that we could sit down as a group
22 and figure out a logical plan for the successive class cert
23 motions, you know, they can be grouped together so that it is
24 not just one every six or eight months --

25 THE COURT: Right.

1 MS. SALZMAN: -- but a group of them so that you
2 are not inundated with 30 class cert motions to hear on a
3 single day, but I think if we can be practical about it and
4 try to measure them out with some ease, you know, all the
5 experts are very costly and I don't think the defendants want
6 to hire multiple experts nor is it good for the class to hire
7 multiple experts just to keep up with the pace to have 30
8 motions filed on the exact same day, and I think that would
9 be a burden to the Court as well.

10 THE COURT: Okay.

11 MS. SALZMAN: So I would suggest that we be allowed
12 to try to meet and confer, come up with a schedule, and if we
13 can't come up with a schedule perhaps by the next status
14 conference to present the plans of each side either to
15 Special Master Esshaki or to Your Honor and to have a
16 meaningful discussion and come up with a practical approach
17 to the schedule for the rest of the cases.

18 THE COURT: Okay.

19 MR. KESSLER: Your Honor, if I may?

20 THE COURT: Yes.

21 MR. KESSLER: First of all, I'm going to urge Your
22 Honor to set July 2016 for hearings as the date, to not delay
23 that to the next status conference which is another four,
24 five months. It is building -- it is granting plaintiffs'
25 request for delay before we even get to a proposal, that's

1 urgent for us, Your Honor. And, Your Honor, I want to be
2 clear we -- NTN, Natchi, we have already given them their DOJ
3 documents so I don't understand that. We were ready to do
4 all transactional discovery, they never requested it from us
5 this whole period of time. Now, plaintiffs have a lot of
6 lawyers and I understand that there are only a few liaison
7 lawyers but they chose to have 29 parts classes, they
8 represented to the Court they had the resources to do this.

9 With respect to the Court, I fully appreciate Your
10 Honor will set whatever schedule for hearing you deem most
11 appropriate, but I would respectfully suggest having the
12 briefing and the expert reports in perhaps one or two other
13 parts besides wire harnesses available to Your Honor, even if
14 you are going to decide just wire harnesses first, I will
15 represent to you will be of great benefit to the Court to see
16 how the plaintiffs' proposed methodology might or might not
17 apply in different circumstances so -- and there will be
18 different experts providing --

19 THE COURT: So kind of like you want to file amicus
20 briefs and --

21 MR. KESSLER: But rather than do that we would
22 brief our motion, Your Honor might decide I'm just going to
23 decide wire harnesses but sort of the worst thing for the
24 Court would be to take a particular view based on what are
25 really unique facts about wire harnesses, okay, because there

1 are some unique facts, and then perhaps take a view of
2 certain things and then find out when I look at two or three
3 others, jeez, this really informs me now because they are
4 going to have the same expert approaches to these different
5 matters so we are trying to present what's more efficient and
6 effective to the Court in terms of -- I certainly agree you
7 cannot hear 30 motions at once. However, I would note that
8 their proposal of taking it to its logical conclusion, which
9 would say like six, seven-month intervals between the motion,
10 I hate to say this, Your Honor, it is 25 years before you
11 reach the last class certification motion under that
12 approach. I don't think that's what the Court has in mind,
13 so what our thinking is --

14 THE COURT: Have we talked settlement?

15 MR. KESSLER: I won't be here, Your Honor. Look,
16 what we thought was most efficient we are willing to go
17 forward, perhaps vibration parts is willing to go forward.

18 THE COURT: Okay. I don't need any more of this.
19 Thank you.

20 MR. KESSLER: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MS. SALZMAN: Well, Mr. Kessler is slightly
23 misstating what I'm saying, although I think Your Honor
24 understands what I'm saying, which is not to have one case
25 every X number of days but just to put the cases in some kind

1 of order where there's waves. So we have wire harness,
2 that's the first case, that's the case that's furthest along,
3 we are going to have a lot of experience after seeing how
4 wire harness shakes out, and then the next group of cases
5 within a reasonable amount of time. We are not talking about
6 3,000 cases, we are talking about 30 cases, and if they are
7 blocked together in a large group once you have a good
8 understanding of what the class proceedings look like I think
9 Your Honor is going to be more than able to conquer a more
10 aggressive schedule, and I think that if we work together we
11 can propose that to you. This idea of amicus briefs from
12 some defendants, not all the defendants, then we would have
13 to file oppositions to those amicus briefs, and these are
14 different defendants in some of the cases and that would
15 become quite complex I think over time when we are trying to
16 ease the burden on the Court in understanding let's look at a
17 picture of one case and then as we do with all the other
18 cases that's the model for cases two, three, four, five, six,
19 et cetera.

20 THE COURT: Okay.

21 MS. SALZMAN: Thank you.

22 THE COURT: Okay. What do you want?

23 MR. KOHN: Good morning, Your Honor. May it please
24 the Court, and good morning, Special Master Esshaki, may it
25 please the Court, Joseph Kohn from Kohn, Swift & Graf in

1 Philadelphia for the direct purchaser plaintiffs.

2 THE COURT: It's these Philadelphia lawyers that
3 have to get the last words. Go ahead.

4 MR. KOHN: Our position is the direct purchasers
5 are somewhat in the middle between where the defendants have
6 presented and where our friends on the indirects' side have
7 presented. I promise I will not take as long as the other
8 presentations you've had, I don't speak as quickly as
9 Mr. Kessler but I won't take as much time I hope, but there
10 are several key points I want to set forth to the Court with
11 respect to how we fit into this.

12 We are not -- we do not want to delay, we are the
13 plaintiffs, we want to move this case along. We are
14 perfectly happy to engage in a discussion of a schedule just
15 on the bearings case. If other cases can dovetail with that
16 or be staggered relative to that we are happy to engage in
17 those discussions.

18 The counterproposal that we made to the defendants
19 and as Your Honor knows, the motions to dismiss were decided
20 seven months ago, the stay was lifted the end of January.
21 February was cold and no one moved. In March they proposed a
22 schedule to us, we had discussions back and forth, we sent
23 our counterproposal. Our proposal was about six months
24 beyond their dates although we asked for some key discussion
25 and negotiation around some of the interim dates. The

1 schedule we propose and we are happy to live with and
2 negotiate further from is a much more rapid schedule than the
3 wire harness schedule. The documents in wire harness began
4 production in the end of 2012. We just are getting DOJ
5 documents here in April, May of 2015. If we had the same
6 time lapse as wire harness we'd be talking about 2019, we are
7 not talking about that.

8 We began receiving the transaction data in harness
9 in the fall of '14. The motion is due 20 months
10 approximately after the transaction data. Here we propose --
11 we have asked can you get the transaction data to us in May?
12 They suggested August, the middle of August they would give
13 the transaction data. Well, it has been five years and
14 that's where we get some concern, there is a lot of very
15 tricky and time-consuming issues around that transaction
16 data. It is their data, it is their computer system, it is
17 their IT folks, and when it takes them four months to gather
18 it and hand it to us that starts to give us some concern
19 about the complexity of analyzing it.

20 By way of example, in wire harness we had experts
21 and IT people, and the economists have their own number of
22 crunching folks, we had letters with questions, there were
23 17-page letters, single spaced, with 120 separate questions
24 with respect to these fields, what date is this, can you have
25 customer names and numbers, so those are issues to be worked

1 through.

2 We would propose if we could get the data sooner we
3 will work sooner, but we don't propose a 20-month lag time
4 between getting the data and our motion as was the case in
5 harness, we propose a shorter time period, perhaps 15 to 16
6 months. We had requested they want to start depositions well
7 before the document production is over. That's not what is
8 happening in harness, it doesn't make sense in most cases, so
9 we had proposed move up your date to finish your document
10 production. They proposed they would complete document
11 production by February of next year with our motion due in
12 July and depositions are supposed to have been completed
13 by -- or depositions would continue into September even
14 though our motions were due in July. So there's a lot of
15 things that don't make sense.

16 In harness the document production was completed --
17 is to be completed August of this year with the motion to
18 follow. So we think we can work with those schedules whether
19 it was a six-month lag or a three-, four-, five-month lag.
20 We also proposed to the defendants if they want to move this
21 stuff and they are ready to, you know, rumble, as we say in
22 the world of the big boxing match we just had, bring
23 witnesses to the United States, you could consent to that so
24 you don't have to wait for the embassy in Japan, we don't to
25 have take depositions in Europe. They said that we -- that

1 there was a negotiation in harness on a much longer schedule
2 that there were compromises reached in that case. It is much
3 cheaper for everyone if the defendants would bring a witness
4 to the United States, that's one person with their staff or
5 aide-de-camp flying to the U.S. and this whole group of
6 lawyers then could stay here and take those depositions
7 rather than all us de-camp to Asia or to Europe.

8 So, again, we are not about delay, we are ready to
9 move with this thing, we don't think the Court, as you have
10 indicated, wants five motions on the same day, we are happy
11 to stagger that, but we think that a schedule should not be
12 used as a sword or as a shield, a schedule should be kind of
13 a neutral principle, and we are happy to work with the
14 parties and the special master to facilitate that.

15 MR. KESSLER: Could I have one minute, Your Honor?

16 THE COURT: No.

17 MS. SALZMAN: I'm just waiting --

18 THE COURT: You don't have anything particular?

19 MS. SALZMAN: I don't have anything particular --
20 nothing new than what I have already said which is a more
21 practical approach.

22 MR. KESSLER: Just one minute, Your Honor. I
23 largely endorse Mr. Kohn's view to move it more quickly, so
24 the only thing to do is if you set our July 2016 date because
25 surely he said he wants it more quickly, if we have internal

1 disputes about producing the transaction data a little
2 sooner, completing substantive things, we will either work
3 that out with him because we are happy to have the dates set
4 and we'll either work out earlier internal deadlines or bring
5 them to Special Master Esshaki and Your Honor doesn't have to
6 worry about that, but it doesn't sound like he's saying there
7 should be any delay, he's saying faster, we are ready to talk
8 about faster, not slower, that is the most important point.

9 THE COURT: I'm going to let you know, I'm not
10 making any ruling on this today, I have some time so I'm not
11 doing that, but I will let you know at the next conference
12 how we are going to schedule it. Okay. Thank you for
13 bringing it to my attention. We will put that on the agenda
14 next time.

15 Okay. Any other matters now? Anybody have
16 anything else?

17 MS. SALZMAN: Your Honor, Hollis Salzman for the
18 end payors.

19 I may have missed an order from the Court, but we
20 had those motions to intervene that were filed sometime
21 before the last status conference. The end-payor plaintiffs
22 responded to that as well as some of the defendants, and I
23 don't believe I saw a ruling on it but I could be mistaken.
24 Those were the incarcerated --

25 THE COURT: The incarcerated person?

1 MS. SALZMAN: Yes, yes, so I wanted to bring that
2 to your attention that that may be still an open issue.

3 THE COURT: We'll be having a ruling shortly on
4 that.

5 MS. SALZMAN: Thank you.

6 THE COURT: It will be done on the briefs. We
7 didn't realize the person was incarcerated when we first got
8 them.

9 MR. KESSLER: Just one question. Your Honor
10 said -- I understand you are not going to decide today, you
11 said by the next conference, which is obviously four months
12 away. What we would ask, could we move forward with our
13 schedule for the next four months? You always can make it
14 longer, the end date, but I think that would make sense so
15 let's assume we are working to July 2016 so we don't --

16 THE COURT: You can assume that's what you are
17 working for because you will just have your work done when --

18 MR. KESSLER: One hand can't clap by itself. I
19 need plaintiffs to agree to work toward that schedule without
20 prejudice to their view that the end date should be later so
21 that we don't lose four months and we come back and say
22 nothing has happened.

23 THE COURT: Let's hear what plaintiffs say about
24 that.

25 MS. SALZMAN: Your Honor, I mean, we have been over

1 this, I just don't want to be prejudiced because I'm not
2 nagging the Court with the same issues. I really think that,
3 you know, we have stated on the record that wire harness
4 should be the paradigm for the other cases. We have no
5 problem moving forward in discovery with bearings.

6 THE COURT: I take it that's what he's talking
7 about.

8 MS. SALZMAN: Please, give us your documents and
9 we'll start looking at them just --

10 THE COURT: I'm not seeing an issue here.

11 MS. SALZMAN: Just for your Court's edification,
12 the end-payor plaintiffs have produced all of the class rep
13 depositions to all of the defense counsel in all of the
14 cases, so we are doing what we can on our end. If bearings
15 defendants want to give us the documents, the transactional
16 data, and start working, we are happy to accept.

17 THE COURT: Okay. You may continue to move
18 forward.

19 MR. KESSLER: We will move forward with that in
20 understanding.

21 THE COURT: Okay. Counsel?

22 MR. HANSEL: Your Honor, Greg Hansel for the direct
23 purchasers.

24 There is one more agenda item, which is the
25 scheduling of the status conference after September.

1 THE COURT: Yes. Okay. The next one is, of
2 course, September 9th. I'm proposing January 13th for the
3 next conference after the September conference.
4 January 13th, do you want to check schedules and see if
5 there's any --

6 MR. WILLIAMS: Your Honor, Steve Williams for the
7 end payors.

8 THE COURT: Mr. Williams.

9 MR. WILLIAMS: On that date in the Northern
10 District of California there is another antitrust MDL for
11 which Mr. Tubach is the liaison counsel for the defendants,
12 and I think a number of defense counsel here are also going
13 to be in that court.

14 THE COURT: Let's take a look at the calendar.
15 That's fine. Do you want to back it up to early December or
16 do you prefer to push it forward?

17 MR. TUBACH: January 20th.

18 MR. WILLIAMS: Mr. Tubach suggested the following
19 week, January 20th. No objection on --

20 THE COURT: Let me see. The 20th? Any problem
21 with that, January 20th?

22 (No response.)

23 THE COURT: Okay. Let's set it January 20th. Do
24 you want to keep the same time, which is 10:00, everybody
25 okay with that?

1 (No response.)

2 THE COURT: Okay. We will set the next one then
3 for January 20th at 10:00.

4 MR. WILLIAMS: Thank you.

5 THE COURT: All right. Anything else -- January
6 20th. We hope we'll have good weather so we can get you all
7 here. All right. We're ready to go to motions unless
8 anybody has an issue? Okay. Let's take a ten-minute break
9 and then we'll start our motions. Thank you.

10 THE LAW CLERK: All rise.

11 (Court recessed at 11:35 a.m.)

12 — — —

13 (Court reconvened at 11:53 a.m.; Court, Counsel and
14 all parties present.)

15 THE LAW CLERK: All rise. Court is in session.
16 You may be seated.

17 MASTER ESSHAKI: A number of you have asked me what
18 my intentions are with respect to the motions that are on my
19 docket for this afternoon. I have consulted with the court
20 reporter, the most important person in the room, and my
21 intentions would be seeing how long we go on the Judge's
22 docket motions, we could then take perhaps a ten-minute break
23 and just come back and plow through those motions that are
24 left on my docket without taking a lunch break or anything
25 like that. The court reporter has indicated that's

1 acceptable to him, and that's the way I would like to plan it
2 for this afternoon. Thank you. Thank you, Judge.

3 THE COURT: Okay. I wanted to make clear because I
4 didn't actually say this on the ruling, on the motion to
5 amend regarding the class period allegations, that you can do
6 that, you can amend as to that.

7 Okay. All right. Let me just get my other list
8 out here. The first motion is -- oh, before we begin even
9 the first motion I have some concern about the fact that some
10 of these motions contain sealed information. I don't exactly
11 know how you want to handle that, if you need to argue the
12 sealed information then we may have to clear the courtroom or
13 you may indicate -- I don't know. Let's hear what --

14 MR. WILLIAMS: Steve Williams.

15 THE COURT: Yes.

16 MR. WILLIAMS: If I could briefly address it? I
17 believe as to the Chiyoda motion and as to the Delphi
18 motions, we now have agreement from the affected parties that
19 those things we need to address can be addressed in open
20 court.

21 THE COURT: That's Chiyoda and Delphi.

22 MR. WILLIAMS: On one of the later motions there
23 still is a concern so what we would suggest is to move that
24 to the end if the Court does need to be closed because a
25 party has designated it confidential or highly confidential,

1 and if we treat those last then just the parties affected can
2 remain.

3 THE COURT: Why don't we proceed in the order they
4 are on the agenda and then if one of them does need to be in
5 a sealed environment if you would just let me know that and
6 we will put it in the end.

7 MS. STORK: Good afternoon, Your Honor -- or good
8 morning, Your Honor. Anita Stork for Keihin North America.

9 I think that motion is one where there might be
10 some sealed material. From the defendants' perspective if
11 those in the courtroom agree to treat it as highly
12 confidential I think we would be fine with having those
13 people -- those attorneys that agree to treat it as highly
14 confidential remain in the courtroom, but I think the
15 plaintiffs might have a different view.

16 THE COURT: Okay.

17 MR. LANGHAM: Your Honor, Chanler Langham with
18 Susman Godfrey for the end payors but speaking on behalf of
19 the indirect purchasers on the Bosch motion.

20 I haven't had an opportunity to confer with them.
21 There is a very small portion which is likely confidential
22 from our complaint that I would mention, but the vast
23 majority of what we have to say is all public information.

24 THE COURT: Okay.

25 MR. LANGHAM: And if Bosch's counsel could identify

1 themselves I could probably talk to them briefly about it.

2 Thank you.

3 THE COURT: I do want you to please let the court
4 reporter, you know, indicate what is sealed so that we can
5 seal the record. If everybody here agrees to keep the
6 information confidential we could seal that portion of the
7 record by you simply indicating what you are about to say is
8 to be sealed. Okay. Does everybody understand that?

9 (No response.)

10 THE COURT: Okay. The first motion is Chiyoda's
11 motion to dismiss auto dealers and end payors.

12 MR. KOWAL: Good morning, Your Honor. If it please
13 the Court and counsel for the plaintiffs, my name is
14 Steven Kowal, I'm the attorney representing the Chiyoda
15 defendants in this case.

16 I'm going to address the motions by the Chiyoda
17 defendants to dismiss the complaints that were filed by the
18 end-payor plaintiffs and auto-dealer plaintiffs. I would
19 like to address two points to the Court this morning, and I
20 guess we are still in this morning.

21 The first is that we submit to the Court there are
22 significant deficiencies in the conspiracy allegations that
23 the plaintiffs have made relating to Chiyoda. There are no
24 factual allegations in the complaint that shows that Chiyoda
25 knowingly joined the conspiracy that is alleged in the

1 complaint, that is a massive decades-long conspiracy to fix
2 the prices for wire harnesses generally. In essence there
3 are no factual allegations that would show Chiyoda knowingly
4 joined a collective venture to achieve that common goal which
5 is the general definition of a conspiracy. The plaintiffs
6 have offered a theory in their briefs which I submit to the
7 Court is foreclosed by decisions of the United States Supreme
8 Court. That's point one.

9 The second point I want to address is that with
10 respect to Chiyoda U.S.A., the U.S. subsidiary, there is no
11 factual allegation of conduct by Chiyoda U.S.A. that would
12 show that it committed any violation. In essence, the web
13 page which is referenced in the complaint shows that
14 Chiyoda U.S.A. does not manufacture wire harness products
15 or --

16 THE COURT: The web page -- the website is an
17 important element here?

18 MR. KOWAL: Yes, Your Honor, and I will address it
19 more specifically as we go through this.

20 So let me go to the first point, what we see as the
21 deficiencies in the conspiracy allegation of the complaint.
22 A little background about Chiyoda. There are two Chiyoda
23 entities that are defendants. Chiyoda Manufacturing Company
24 is a company in Japan that manufactures some automotive
25 products. The complaint alleges that Chiyoda Manufacturing

1 alleges wire harness products and sells them to Subaru. The
2 only purchaser that is identified in the complaint is Subaru.
3 Chiyoda U.S.A. is the wholly-owned subsidiary of Chiyoda
4 Manufacturing Company, it is a U.S. company in Greencastle,
5 Indiana. The plaintiffs allege that Chiyoda U.S.A. sold
6 products to Subaru, also sold products to Ford which are not
7 relevant here. If we looked at the web page we would see
8 that Chiyoda U.S.A. was established in 2005, and it does not
9 manufacture wire harness products.

10 THE COURT: Wait a minute. It does not right now,
11 the web page is current --

12 MR. KOWAL: That's correct, Your Honor.

13 THE COURT: -- as opposed to back when?

14 MR. KOWAL: The -- a little background about the
15 companies. As the complaints allege what is the market share
16 of many of the companies, and Chiyoda is in stark contrast to
17 many of them, it is a very small company. I believe that at
18 least one of the complaints has a pie chart of the market
19 shares of the companies with the lowest being about
20 1.5 percent. Chiyoda is not on that chart, it is not listed,
21 it is somewhat -- certainly less than 1.5 percent of the
22 sales of wire harnesses. It is in effect a sliver of the
23 kind of conduct we are talking about before the Court.

24 THE COURT: It may be a sliver but that wouldn't
25 excuse it.

1 MR. KOWAL: Of course not, Your Honor, but I think
2 it does play into how this will evolve when we go through the
3 argument.

4 But another fact that I think is in stark contrast
5 to many of the other defendants in these cases is the lack of
6 involvement of Chiyoda in any of the government enforcement
7 actions. The first involvement that Chiyoda had in any of
8 the litigation or enforcement involving wire harnesses was
9 when it was named as a defendant in the fourth-amended
10 complaint in the wire harness litigation in October of 2014.
11 Neither Chiyoda Manufacturing or Chiyoda U.S.A. has entered
12 into a plea agreement for wire harnesses or any other
13 products. It was never served with a Grand Jury subpoena in
14 the United States for wire harnesses or any other products.
15 It has not been involved in any U.S. investigation. None of
16 its individuals have been involved in any U.S. investigation.
17 As far as we know -- as far as I know at least it has never
18 been identified as an unindicted co-conspirator in any of
19 these actions.

20 So in contrast to many of the other companies and
21 apart from what has been the approach in many of the
22 complaints of making a lot of -- drawing a lot of conclusions
23 from the existence of those investigations and plea
24 agreements, that does not exist for Chiyoda. I submit to the
25 Court that one of the effects of that is where with other

1 defendants there are general allegations that they engaged in
2 conduct, I have to assume at least that those general
3 allegations are to some extent supported by the conclusions
4 drawn from plea agreements and investigations in these or
5 other products. Those factual bases or the credence that
6 those investigations give to those general allegations do not
7 exist for Chiyoda.

8 So what I wanted to do, Judge, is turn to what it
9 is that is alleged that would tie Chiyoda to the conspiracy
10 that is charged, the massive decades-long conspiracy for wire
11 harness generally, and to put it into words of the Twombly
12 decision, which we all like to talk about in these cases,
13 what is the plausible basis for that conspiracy? There are
14 two -- there is one paragraph in each of two complaints that
15 focuses specifically on conduct by Chiyoda.

16 THE COURT: You are talking about the 2003?

17 MR. KOWAL: Yes, and this would be one of the
18 things that I think came from the unredacted complaints but
19 in the auto dealers' complaint there is a reference to
20 communications involving three Subaru models beginning in
21 1999, I'm not quibbling with the dates here, but there are
22 communication involving three Subaru models, the Forester,
23 the Legacy and the Impreza. There is no differentiation in
24 the complaints between Chiyoda Manufacturing and
25 Chiyoda U.S.A. There's no other allegation of any

1 communication by any other customer except for Subaru.

2 In the end-payors' complaint there is one paragraph
3 that is similar, it's beginning in 2003, the allegation is
4 that there were communications involving Subaru for the same
5 models. Once again, no differentiation between Chiyoda
6 Manufacturing and Chiyoda U.S.A.

7 So the question that I posed to the Court and we
8 posed in our pleadings is how do you take those allegations
9 of communications involving Subaru and turn those into
10 sufficient allegations of the massive decades-long conspiracy
11 involving all wire harnesses? And when courts have addressed
12 this issue, they have done it in many contexts, there is
13 situations where there is communications involving one
14 customer, one contract or one account, and the question is
15 always is the conspiracy related to that overall -- all of
16 the customers, all of the contracts, all of the accounts, or
17 is the conspiracy allegation one of this customer, this
18 account, this contract? Is it a big conspiracy or is it a
19 series of little conspiracies?

20 And when courts have focused on this issue what
21 they have looked at are several factors but primarily they
22 have looked at interdependence between and among the
23 co-conspirators. Were the actions of the co-conspirators
24 mutually supportive to bring about the common goal that's
25 charged. Did the conspirators depend on the success of each

1 other's activities to bring about that common goal? And I
2 submit to the Court that there are no factual allegations in
3 this complaint that show interdependence of actions by
4 Chiyoda and actions involving sales to others. What is
5 alleged only relates to sales to Subaru. There is no
6 interdependence between the sales to Subaru and the sales to
7 anybody else, and if we want to put in the words of the
8 antitrust complaint, if there was an anti-competitive effect
9 concerning the discussions that occurred with Subaru there is
10 no reason to believe that had anything to do with anybody
11 else.

12 THE COURT: Those discussions would be by
13 Chiyoda Japan because you said the U.S.A. Chiyoda wasn't
14 established until 2005; is that right?

15 MR. KOWAL: Well, that's true, Judge. Here's my
16 assumption from the complaint. As I said, the complaints do
17 not differentiate in any way about who had -- which of the
18 Chiyoda entities or both I assume would have had the
19 communications involving Subaru. In fairness, I think
20 that -- I take the dates that the plaintiffs have alleged in
21 the complaint are beginning on or about that and going
22 forward, so I don't want to -- I'm not trying to pin the date
23 down as something that I'm relying on. I think that fairly
24 interpreted, I understand what the plaintiffs' allegations
25 mean, and they talk over a broader period of time, but you

1 are correct that there is no indication in the complaints,
2 there is no differentiation in the complaints of whether
3 those communications that are alleged, the one paragraph in
4 each complaint alleging the communications to Subaru, were
5 from Chiyoda Manufacturing in Japan or Chiyoda U.S.A.

6 Now, even though the complaints don't contain any
7 factual allegations that shows this interdependence of the
8 activities of conspirators, the plaintiffs do express a
9 theory of conspiracy in the response. And I want to -- I'm
10 going to try to read this because I think it is important for
11 us to focus on it. It is on pages 8 and 9 of their response,
12 and I will put together a few sentences and leave out a
13 little in between because I don't think it is material. The
14 plaintiffs' response says, begin at page 8, this contention,
15 that is the defendants' contention that sales are only
16 Subaru, this contention is misguided because that one other
17 defendant, and I think it is for the end-payor complaint,
18 there is allegation of communication with only one other
19 party, this contention is misguided because that other
20 defendant is Fujikura, which has already pled guilty to
21 participating in a criminal conspiracy to rig bids for and to
22 fix, stabilize and maintain prices for automotive wire
23 harnesses from at least as early as January 2006 continuing
24 to at least February of 2010.

25 And then I skip a couple sentences but the

1 conclusion is this, there is no question that a criminal
2 conspiracy existed in this market. That part I would accept
3 because of the allegations involving others that the
4 plaintiffs have made in other cases, but then it continues,
5 and these allegations directly show that the Chiyoda
6 defendants are inextricably linked to the heart of that
7 conspiracy. I would submit to the Court that there are no
8 allegations that the Chiyoda defendants are inextricably
9 linked to that conspiracy.

10 What there is is an allegation that Chiyoda had
11 communications involving Subaru, and what the plaintiffs are
12 saying is those communications mean that Chiyoda is linked to
13 all of these other communications, all of the other
14 purchasers, and that's why they are part of a massive
15 conspiracy to sell wire harnesses generally. So it is
16 Chiyoda, we are talking about Subaru and then everybody else.

17 And I submit to the Court, and we addressed this in
18 our brief, it is in the Baldrige case, but the Baldrige
19 case relies on the Kotteakos decision. I'm sure Your Honor
20 in dealing with many criminal cases has addressed Kotteakos.
21 Basically what happened in Kotteakos is there was a central
22 conspirator and a bunch of financial transactions of other
23 conspirators with that central point. What the Supreme Court
24 said in Kotteakos is that does not define one conspiracy;
25 there must be a single purpose for the activity of the

1 conspirators. As we know, in many cases it is the scope of
2 the agreement that defines the conspiracy. And what
3 Kotteakos said and other cases is that it is not enough to
4 have similar objectives, it is not enough to have parallel
5 objectives by similarly-situated parties, you have to have
6 parties that have jointly -- knowingly join a collective
7 venture, an agreement, for a common purpose. I submit to the
8 Court there are no facts in this case that show that Chiyoda
9 defendants joined in the conspiracy that is defined by the
10 complaint.

11 Despite the absence of those factual allegations
12 there's significant prejudice for Chiyoda. One of the
13 obvious ones is the cost of being involved in this massive
14 litigation. Listening to all of the presentations this
15 morning of all of the issues that go on, and Chiyoda, which
16 is this very small company, is now being drawn into this
17 massive conspiracy based on allegations that we think are
18 deficient. And this is one of the issues that was addressed
19 by Twombly by the Supreme Court and one of the issues that
20 the judges focused on about why it is important for the court
21 to find a plausible theory before a case proceeds, and what
22 the Supreme Court said in essence, I will paraphrase, we have
23 to recognize that the cost of litigation and particularly of
24 discovery, particularly for cost-conscious companies, Chiyoda
25 with its position in the market is a cost-conscious company,

1 may cause them to settle even anemic claims, I think that is
2 the phrase from the court, when they shouldn't.

3 That's part of the prejudice I think that Chiyoda
4 is now experiencing being brought into this massive
5 litigation over these types of allegations. And in addition,
6 going forward I think we should recognize or I submit to the
7 Court we should recognize that there will be evidentiary
8 issues that will prejudice Chiyoda and cause a great deal of
9 heartache because in dealing with what are the
10 co-conspirators' statements, what evidence can be used to
11 show Chiyoda was involved in the scope of the conspiracy was
12 involved in are going to be very difficult to sort out in a
13 situation where there is no legally-accepted plausible theory
14 of Chiyoda's connection to this massive conspiracy. So
15 that's point one, Your Honor.

16 THE COURT: Okay.

17 MR. KOWAL: The second point, and I will be much
18 shorter, I promise, deals with the conduct of the Chiyoda
19 subsidiary. The plaintiffs allege that Chiyoda U.S.A. sold
20 product to Subaru and they said they sold wire harnesses to
21 Subaru, and they cite as the basis for that the web page from
22 Chiyoda U.S.A. And so we say -- we looked at the same
23 website product description and it doesn't say they make wire
24 harnesses; they don't make wire harnesses, they don't make
25 wire harness systems. What has happened is the plaintiffs

1 say we can use the referenced website to support our first
2 position but we can't use the referenced website to support
3 the second proposition. And my suggestion to the Court is
4 that is a position that is manifestly unfair. If it is good
5 enough to support the allegations in the complaint that
6 supports going forward, it also should be good enough to
7 support the allegations in our motion to show we shouldn't go
8 forward.

9 Both sides cited a bunch of cases about whether the
10 Court could review the website or not. I recognize that's a
11 matter for the Court's discretion, there is no doubt about
12 that, I'm not going to try to parse through those cases. I
13 submit to the Court the focus, however, is that where
14 information is reliable and significant courts have accepted
15 it, and here I submit that the information on the website is
16 reliable, the plaintiffs used it, in essence conveying their
17 belief and its reliability.

18 THE COURT: Okay.

19 MR. KOWAL: And secondly, it is not the kind of
20 information that was reviewed by courts that refused to
21 acknowledge that information, it was not something prepared
22 in litigation, it is not an advocate's position, it is a
23 business document, and here it is significant because it
24 would show that Chiyoda U.S.A. does not belong in this case
25 because it didn't sell these products.

1 Now, Your Honor asked early on the same question
2 that plaintiffs raised and it is a very good question, it is
3 the website at the time it was reviewed by the plaintiffs or
4 the website at the time we reviewed it. That's true, we
5 can't do anything else. However, there is nothing that I am
6 aware of and there is no information that has been advocated
7 that either the website was not accurate or that situation
8 was different at some time earlier, and unless the plaintiffs
9 can come forward with that I don't think there is a basis for
10 Chiyoda U.S.A. to remain in the case.

11 THE COURT: All right. Thank you.

12 MR. KOWAL: Thank you, Your Honor.

13 THE COURT: Response?

14 MS. TRAN: Good afternoon, Your Honor. May it
15 please the Court, my name is Elizabeth Tran of Cotchett,
16 Pitre & McCarthy, and I will be arguing on behalf of the end
17 payors as well as the auto dealers.

18 Chiyoda is no different from any other defendant in
19 this multi-district litigation. Although Chiyoda says it
20 sits in a strikingly different position than other
21 defendants, Mr. Kowal has advanced the same arguments in this
22 motion to dismiss that other defendants before Chiyoda have,
23 the same arguments that this Court has rejected. Chiyoda is
24 no different for several reasons.

25 First, Chiyoda may not have pled guilty or been

1 subject to a DOJ investigation but neither had Lear whose
2 motions to dismiss this Court had denied and with whom
3 plaintiffs settled. Next, Chiyoda Japan concedes that it
4 sells wire harnesses to one purchaser but fails to mention
5 that other defendants in this case, such as Yazaki, with whom
6 plaintiff settled last year, also sold to that same
7 purchaser. Chiyoda also minimizes the fact that that one
8 purchaser is Subaru, a major automotive manufacturer who
9 sells into the U.S. Additionally Chiyoda U.S.A. claims that
10 it neither manufactures nor sells wire harnesses based on a
11 printout of its products web page. This is extrinsic
12 evidence in direct conflict with what plaintiffs have offered
13 in their complaint, and the Court contrary to what --

14 THE COURT: Wait a minute. You are saying Chiyoda
15 admits -- well, they did, that they sold wire harnesses?

16 MS. TRAN:

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18 THE COURT: But now it is saying that it doesn't
19 make wire harnesses?

20 MS. TRAN: It says Chiyoda U.S.A. doesn't
21 manufacture or sell wire harnesses.

22 THE COURT: That's Chiyoda U.S.A. but what about
23 Chiyoda Japan?

24 MS. TRAN: Chiyoda Japan does sell and manufacture
25 them.

1 THE COURT: Okay.

2 MS. TRAN: Going back to the website argument, the
3 Court can't consider it on a motion to dismiss because it
4 directly conflicts with what we have offered in our
5 complaints, and even considering the website shows nothing
6 more than Chiyoda U.S.A.'s products as of February 5th of
7 this year.

8 And finally Chiyoda argues that it has been thrust
9 into this massive antitrust class action without any factual
10 basis. On the contrary, it was only after two years of
11 hard-fought discovery and extensive investigation that we've
12 alleged Chiyoda's participation in the wire harness
13 conspiracy for the first time.

14 I would like to turn to Mr. Kowal's first argument
15 regarding the significant deficiencies as to Chiyoda specific
16 allegations. His argument blatantly ignores plaintiffs'
17 allegations about Chiyoda. First we have alleged that
18 Chiyoda Japan manufactured, marketed and sold wire harnesses
19 directly or through its subsidiaries. Second, we've alleged
20 that Chiyoda U.S.A. is a subsidiary that is wholly owned and
21 controlled by Chiyoda Japan and has its principal place of
22 business in Indiana and manufactured, marketed and/or sold
23 wire harnesses. Third, we have alleged that the
24 Chiyoda U.S.A. customers include Subaru of Indiana Automotive
25 and Ford, both of whom sell cars into the United States.

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Chiyoda's argument that we don't have -- our allegations against them are scarce completely disregards our allegations concerning all defendants. The complaints include dozens of these allegations that relate to defendant's co-conspirator status, price-fixing and bid-rigging agreements and market characteristics facilitating collusion.

In the Court's order denying G.S. Electek's motion in this case, this Court asserted that the complaints must be viewed as a whole and detailed allegations regarding each defendant's participation are unnecessary per Carrier Corp. The allegations concerning Chiyoda coupled with the allegations relating to all defendants plausibly suggest that there were agreements between Chiyoda and co-conspirators that raise a reasonable expectation that discovery will reveal evidence of legal agreements per Twombly.

As to Mr. Kowal's second argument about Chiyoda U.S.A., as I mentioned earlier, the Court can't

1 consider it. Chiyoda U.S.A. has introduced it to show that
2 it hasn't manufactured or sold wire harnesses although the
3 complaints do cite Chiyoda U.S.A.'s website, albeit without
4 attaching it or incorporating it by reference to identify
5 Chiyoda U.S.A. customers. The 6th Circuit in Media Com held
6 that it is improper for the Court to rely on extrinsic
7 evidence where the facts in the complaint directly conflict
8 with the facts in the referenced documents.

9 THE COURT: Why did you even throw in that
10 reference to the website? I mean, I know you wish you didn't
11 now but --

12 MS. TRAN: We wanted to show that Chiyoda U.S.A.'s
13 customers included major manufacturers of automobiles in the
14 U.S. We had discussed other defendants and their customers
15 in the U.S. as well.

16 If the Court were to credit defendants' version of
17 the facts instead of ours at this time, Media Com states that
18 this Court would inappropriately be raising the Twombly and
19 Iqbal pleading standards from plausible to probable or
20 persuasive.

21 While it is accurate that the Court may consider
22 extrinsic evidence so long as it is central to the claims in
23 the complaint per Media Com, the contents of Chiyoda U.S.A.'s
24 website are neither central or integral to plaintiffs' claims
25 here.

1 I would also like to mention that Mr. Kowal's
2 standard of reliable and significant is not actually the
3 standard.

4 Paragraph 110 of the end-payors' complaint and 103
5 of the dealers' complaint standing alone already allege that
6 Chiyoda U.S.A. manufactured, marketed or sold wire harnesses.
7 And as a further example, if the Court ignores the passing
8 reference to Chiyoda U.S.A.'s websites in the complaints the
9 central allegations of collusion and market conditions that
10 facilitated collusion remains, all of which the existing
11 guilty pleas support.

12 THE COURT: Okay.

13 MS. TRAN: And I would just like to address another
14 point raised by Mr. Kowal as to Chiyoda's size.

15 THE COURT: As to what?

16 MS. TRAN: Chiyoda's size. Chiyoda's assertion
17 that it is a small player in the wire harness market doesn't
18 save them. Like Chiyoda, neither Denso or G.S. Electek were
19 included in figures 3 and 4 of the end-payors' complaint,
20 which depict the global wire harness market and the 11
21 largest manufacturers. The Court denied both of their
22 motions to dismiss in this case.

23 THE COURT: Okay. Thank you very much.

24 MS. TRAN: Thank you.

25 THE COURT: Brief reply?

1 MR. KOWAL: Your Honor, if I may just very briefly.
2 On the conspiracy issue, the basic issue remains after the
3 plaintiffs' recitation, the scope of the conspiracy is the
4 scope of the agreement of the parties, and there are no facts
5 alleged in the complaint that would show, even assuming them
6 to be true, that would show Chiyoda was involved in anything
7 other than communications involving Subaru and there is no
8 connection between Subaru and the massive conspiracy alleged,
9 that's the conspiracy side.

10 On the Chiyoda U.S.A. side, I think Your Honor
11 asked a very perceptive question of why did you cite it. My
12 suggestion would be the reference appears in the complaint
13 because the plaintiffs needed it to show that Chiyoda U.S.A.
14 sold to Subaru, but once having done that I think they also
15 should have to deal with the fact that the website shows that
16 although certain products are sold to Subaru, Chiyoda U.S.A.
17 does not sell wire harnesses.

18 And the argument that the Court should reject that
19 because it is in conflict with other general statements I
20 find difficult to comprehend because what it is basically
21 saying is from the plaintiffs' standpoint, allow us to make
22 whatever general statement we want irrespective of the
23 factual basis but when there is a factual basis and it is
24 drawn from the same support the plaintiffs used the Court
25 should not review that. I don't -- I submit to the Court

1 that's not the holding of any of the cases that were cited
2 but more importantly it is not what should be done in this
3 sort of situation from the standpoint of reasonable
4 interpretation of the pleadings and the Court's decision to
5 hold Chiyoda U.S.A. in this case. Thank you.

6 THE COURT: Thank you.

7 MS. TRAN: If I may just one minute?

8 THE COURT: One second.

9 MS. TRAN: Even if the Court considers
10 Chiyoda U.S.A.'s website converting this motion to dismiss
11 into a motion for summary judgment, like I said, it shows
12 nothing more than Chiyoda's products as of February 5th of
13 this year. The Chiyoda U.S.A. website therefore doesn't
14 contradict the complaints filed well before then detailing a
15 decade long wire harness conspiracy and Chiyoda's discussions
16 with conspirators about Subaru's wire harness RFQs from 2003
17 to 2010.

18 THE COURT: Okay. Thank you.

19 MS. TRAN: Thank you.

20 THE COURT: All right. The next one is the
21 windshield wipers, Bosch.

22 MR. FELDBERG: Good afternoon, Your Honor. I'm
23 Michael Feldberg from Allen & Overy. I represent the Bosch
24 parties.

25 There were three Bosch parties involved in the

1 windshield wipers case; Bosch Korea, an entirely Korean
2 company, Bosch L.L.C., which is a U.S. company, and the
3 parent company, Bosch GmbH, which is a German company.

4 This is a straightforward motion --

5 THE COURT: Let me just ask because in the two
6 motions there is use of different terms. Bosch, the German
7 company, is also referred to as GmbH?

8 MR. FELDBERG: Yes, those are the initials
9 signifying the German corporation, the equivalent of inc. in
10 the U.S.

11 THE COURT: And that's called Bosch Global also?

12 MR. FELDBERG: Yes.

13 THE COURT: And it is also known as Bosch
14 Electrical?

15 MR. FELDBERG: No. Bosch Electrical Drives is
16 sometimes called Bosch Korea. We have Bosch -- for ease of
17 reference, if it please the Court, we will refer to them as
18 Bosch Korea, Bosch U.S., and the parent Bosch GmbH.

19 THE COURT: Bosch Korea, Bosch U.S. and Bosch GmbH.
20 It would be nice if both sides used the same terms, it would
21 be so much easier.

22 MR. FELDBERG: We will try to work that out if
23 there is any need to after the Court decides this motion,
24 Your Honor.

25 THE COURT: I hate to spend time on charts of

1 names. Okay. Go ahead.

2 MR. FELDBERG: There's really two points to make
3 today, Your Honor, and that's -- and those are the following:
4 There are in these two complaints, and they are essentially
5 the same, they are each over a hundred pages, there are only
6 three allegations that are specific to Bosch. One of those
7 allegations is specific to Bosch Korea and it says that Bosch
8 Korea was fined by the Korean Fair Trade Commission, but
9 Bosch Korea is a company over which the Court does not have
10 jurisdiction; it is an entirely Korean owned, operated and
11 managed business which has no offices or employees or bank
12 accounts or anything else in the United States and does no
13 business in the United States and whose matter has been
14 entirely and completely addressed by the Korean Fair Trade
15 Commission.

16 With respect to the other two allegations that are
17 Bosch specific in these two complaints, and the allegation is
18 simply against Bosch, it doesn't specify which entity, the
19 allegations are simply that Bosch received RFQs. There is no
20 allegation that Bosch did anything with respect to those
21 RFQs, that Bosch communicated with anyone with respect to
22 those RFQs, that Bosch did anything at all with respect to
23 those RFQs, there is no allegation that Bosch did anything
24 wrong.

25 THE COURT: They opened the mail, they opened the

1 RFQs.

2 MR. FELDBERG: Even under the most elastic
3 interpretation of the mail fraud statute, Your Honor, I don't
4 think opening the mail would qualify.

5 THE COURT: Okay.

6 MR. FELDBERG: Now, let's talk about Bosch Korea
7 first. This is a 12(b)(2) motion to dismiss for lack of
8 jurisdiction. It is supported by two declarations from
9 Mr. Woo, who has been employed by Bosch Korea for 30 years,
10 he's the representative director, he's responsible for
11 operations, he's responsible for logistics, quality,
12 financial, human resources and general affairs. And we
13 learned from Mr. Woo that Bosch Korea is a private Korean
14 company, it is a sub of the German parent, it has its
15 headquarters in Korea, it has no presence in the United
16 States, it has no office in the United States, it has no
17 telephone number or address in the United States, it is not
18 licensed to do business in the United States, it has never
19 had a registered agent in the United States, it has no
20 manufacturing facility in the United States, it has no
21 employees, agents or representatives in the United States or
22 any that regularly travel to the United States, it has no
23 real estate in the United States, no bank accounts in the
24 United States, does not pay U.S. taxes, doesn't hold meetings
25 in the United States, targets Korea for its business and does

1 not target the United States, does not provide support or
2 services for products in the United States, sells primarily
3 to Korean companies and has no control over any further sales
4 those companies may make. Bosch Korea has its own employees
5 who are separate from the employees of other Bosch entities,
6 it has its own budget also separate from other Bosch
7 entities, it has its own office and management board separate
8 from other Bosch entities, has its operations and income,
9 purchases its own supplies, maintains its own capital.

10 THE COURT: Does it have anything in common with
11 its parent or other entities?

12 MR. FELDBERG: Anything? I'm sure there are
13 elements of business strategy that like any global company
14 are shared by different units but Your Honor has held in
15 other cases that's not sufficient to establish jurisdiction.
16 This company has -- in terms of the key operational logistics
17 we learned from Mr. Woo that it has everything independent;
18 offices, management board, employees, budget, revenue,
19 capital, isn't dependent upon other Bosch units for supplies
20 or services, separate employees, separate bank accounts, I
21 could go on.

22 In short, Bosch Korea is an entirely Korean company
23 doing business in Korea and not in the United States, and
24 just as this Court held in Ichikoh and AB SKF and Schaeffler
25 and Leoni and S-Y, it should be dismissed for lack of

1 jurisdiction. Whatever matter it had with the Korean Fair
2 Trade Commission was dealt with in Korea, it was a Korean
3 matter.

4 Now, what do the plaintiffs say in response? Well,
5 they concede that the Court lacks general jurisdiction, it is
6 right in their brief, but they claim that the Court has
7 specific jurisdiction because they say that Bosch wipers were
8 sold in the U.S. Now, they rely for that proposition in
9 their brief, not in their complaints but in their brief, on a
10 website which they say shows sales to the United States.
11 Unfortunately they have misinterpreted the website as Mr. Woo
12 has explained to the Court. The website does not show sales
13 of wipers by Bosch Korea, in fact, it does not show sales by
14 Bosch Korea. It shows sales by all Bosch units globally for
15 electrical drive products which includes wipers, window lift
16 motors, seat actuators, engine cooling systems and HVAC
17 blowers. So the website does not support the proposition for
18 which it is cited in plaintiffs' brief, there is no
19 allegation in the complaint, and most importantly once their
20 misunderstanding was pointed out plaintiffs have offered no
21 response. And with that fact established there is simply no
22 allegation and no evidence that Bosch Korea does anything in
23 the United States or targets anything to the United States.

24 To cite the case that plaintiffs themselves rely
25 on, the Carrier decision from the 6th Circuit, there is no

1 evidence that Bosch Korea purposefully availed itself of the
2 privilege of acting in the United States, no evidence that
3 the causes of action alleged here arise from any activity of
4 Bosch Korea in the United States, and for the Court in these
5 circumstances to exercise jurisdiction over Bosch Korea would
6 be entirely unreasonable.

7 THE COURT: What about the plaintiffs' theory that
8 Bosch Korea business in the United States was indirect and
9 that they knew that their product was going to come into the
10 United States?

11 MR. FELDBERG: That's answered by Mr. Woo's
12 declaration, Your Honor, who says that we sell primarily to
13 Korean businesses and we have no control over any ongoing
14 sales which there may be, there may not be. And I believe
15 there is substantial case law for the proposition that if a
16 non-U.S. company sells to another non-U.S. company and
17 that -- the buyer then sells to the U.S. that's not specific
18 to -- that does not create specific jurisdiction unless that
19 was the plan and intention of the seller originally, and we
20 cite those cases I believe in our briefs, Your Honor.

21 THE COURT: Okay.

22 MR. FELDBERG: Now, what happens if the Court, as
23 we argue it should, dismisses Bosch Korea just as it has
24 granted motions to dismiss in the other cases I have
25 mentioned in this MDL? The only allegation that remains

1 against the remaining Bosch defendants was that they received
2 RFQs.

3 And if the Court will permit me I would like to
4 actually hand up the relevant paragraphs from the end-payors'
5 complaint just so the Court can see it graphically. May I
6 approach?

7 THE COURT: You may.

8 MR. FELDBERG: Counsel, here you are.

9 MR. LANGHAM: Do you have the auto dealers?

10 MR. FELDBERG: I don't have it printed out but the
11 allegations are identical in the auto-dealers' complaint.
12 Thank you.

13 And, Your Honor, if you would -- we have the cover
14 page and then on the second page we have both paragraphs, and
15 then on the third and fourth pages we have the paragraphs
16 separately in case, like me, you would prefer larger type.

17 In any event, if you look at paragraphs 166 and
18 167, all that is alleged, and these are the only remaining
19 allegations against Bosch, is that Bosch and some other
20 companies got RFQs. And if Your Honor continues reading
21 through those paragraphs you will see there is nothing else
22 alleged as to Bosch.

23 MR. LANGHAM: Your Honor, I would just like to
24 point out that the auto-dealers' complaint is different and
25 it is quoted on page 12 of our brief. I will point it out to

1 the Court, but I just want to make sure that it is aware that
2 the complaints are, in fact, different.

3 MR. FELDBERG: Your Honor, I'm happy to deal with
4 the other complaint. The allegations are substantively the
5 same. There is no allegation that Bosch did anything with
6 respect to the RFQs that it received. There is no allegation
7 that it communicated with anyone, that it agreed with anyone,
8 that it bid on anything, that it did anything at all with
9 respect to those RFQs.

10 Let me just turn to the other complaint which
11 counsel referred to and --

12 THE COURT: You are talking now about the
13 auto-dealers' complaint?

14 MR. FELDBERG: Yes, it is in paragraphs 186 and
15 187, and substantively the same principle applies, no
16 allegation that Bosch did anything.

17 Now, under Twombly and its progeny it is simply not
18 enough to say well, they received an RFQ. You have to allege
19 that they did something that arguably at least is in --
20 states a cause of action, is in violation of the law. So
21 what do the plaintiffs say in response to this argument?
22 They make essentially two arguments. They say there are
23 broad allegations of an industry-wide conspiracy so the Court
24 should apply a conspiracy theory, even though as the
25 plaintiffs concede at page 16 of the brief the Court has

1 declined to apply a conspiracy theory in this very MDL in
2 other cases. And there's certainly no reason in this case
3 where there are no specific allegations of wrongdoing against
4 Bosch for the Court to depart from its reasoning in prior
5 decisions.

6 Secondly, the plaintiffs attribute or attempt to
7 attribute the allegation against Bosch Korea that it was
8 fined by the Korean Fair Trade Commission and there is only
9 one such allegation to the other Bosch entities, and they
10 cite a decision by Your Honor in this MDL that if a parent
11 uses its subsidiary to commit a fraud the Court may treat the
12 parent and the subsidiary as a single entity and that's, of
13 course, a valid proposition of law, but there is no
14 allegation here and there's certainly no evidence that the
15 parent, in this case the German company, did that. There is
16 no allegation that the parent did anything at all except
17 possibly if it is what they mean by Bosch received an RFQ.

18 As the plaintiffs acknowledge at page 13 of their
19 brief, the burden is on the plaintiff if they are seeking to
20 pierce the corporate veil, and they need to demonstrate
21 affirmatively the parent's control over the sub is so
22 extensive as to permit imputation. There is no allegation of
23 that and there is certainly no evidence of that here.

24 To the contrary, the undisputed evidence is that
25 the parent did not control the sub and that the sub was

1 entirely independent. So the plaintiffs are left with only
2 their allegations against Bosch and there is no allegations
3 that those companies did anything wrong.

4 Plaintiffs finally argue that it is plausible to --
5 this is in the brief -- to conclude that Bosch must have done
6 something wrong or must have conspired. That's pure
7 speculation, Your Honor. They don't allege it, they don't
8 allege a single communication, they don't allege a single
9 agreement to survive a motion to dismiss under Twombly and
10 its progeny. Plaintiffs have to allege some facts.

11 THE COURT: Okay. Let's hear what plaintiff has to
12 say --

13 MR. FELDBERG: Thank you, Your Honor.

14 THE COURT: -- what those facts are.

15 MR. LANGHAM: Thank you, Your Honor.

16 Chanler Langham from Susman Godfrey speaking on behalf of the
17 end-payors and auto-dealer plaintiffs, the indirect purchaser
18 plaintiffs.

19 I just want to point out first for the Court that
20 this case is different than a holding company like AB SKF
21 that never sold any product anywhere. This case is different
22 than Ichikoh who say they never sold any products at all in
23 the United States. This case is different from some other
24 defendants that say they never pled guilty or were sanctioned
25 for bid rigging and fixing prices, that's not this case.

1 That is not the same facts that this Court has ruled on in
2 the past.

3 The allegations in our complaint are sufficient to
4 show that Bosch Korea has sufficient contacts with this
5 jurisdiction because we allege that Bosch Korea sold products
6 in the United States.

7 THE COURT: Yes, but what do you have, what
8 products did they sell in the United States, Bosch Korea?

9 MR. LANGHAM: Well, you know, it is interesting
10 because when you look at the affidavit that they submitted
11 they actually don't deny that Bosch Korea sells windshield
12 wipers in the United States. They had ample opportunity to
13 deny that even though it is almost summary judgment here when
14 they submit an affidavit, but they didn't deny that they sell
15 windshield wipers in the United States. And when we look at
16 how they try to distinguish things about the website and what
17 it says about 19 percent of Bosch's sales being in the United
18 States, they say that those sales include windshield wipers
19 but they don't tell us what company of Bosch actually sent
20 those and sold those and shipped those.

21 THE COURT: But you're saying that Bosch Korea is
22 the one that sold these windshield wipers directly to the
23 U.S., not through some third party?

24 MR. LANGHAM: Absolutely, and the thing is that we
25 have the press release that was issued by the Korean Fair

1 Trade Commission that tells us about their own investigation
2 into this, and they tell us that from August 2008 to
3 February 2009 Denso and Bosch Electrical Drivers agreed upon
4 a --

5 THE COURT: Slow down, please.

6 MR. LANGHAM: They agreed upon a successful bidder
7 and implemented such agreement in regard to six tenders for
8 wipers held by Hyundai Kia including the Hyundai Elantra or
9 Avanta and the Hyundai Sonata. They also tell us that all
10 models of the Hyundai Kia were actually subject to the
11 cartel, and it is anticipated that the ripple effects of the
12 present sanctions by the Korean authorities will be
13 significant. They also tell us that uncovering the cartel
14 required close cooperation such as on-site investigations in
15 exchange for information with competition authorities in the
16 United States and the European Union. In order to uncover
17 this international price-fixing cartel they had to rely on
18 information in the United States about sales that they don't
19 deny they made in the United States. That is sufficient just
20 based on Exhibit B of their own motion we see that.

21 This suggests that as plaintiffs allege that the
22 conspiracy not only involved windshield wiper systems sold in
23 Korea but also involved windshield wiper systems sold in the
24 United States. Indeed, the fact that this international
25 conspiracy involved all models of Hyundai Kia and that

1 Hyundai Kia manufactured its vehicles right here in the
2 United States, in Alabama for Hyundai, and that Bosch Korea
3 does not deny that it sells products in the United States are
4 telling because Bosch Korea says -- it tells us in its motion
5 the bids that it won, only for the bids that it won, it
6 shipped products to Korea, but it doesn't tell us about any
7 of the bids in which it agreed to lose and where those
8 products were shipped or it doesn't tell us about the other
9 products that it ships to the United States. And counsel
10 told us that it primarily deals with Korean entities but it
11 doesn't tell us about the United States entities that it
12 deals with because if it was all Korean entities they would
13 have said that but they just said summarily; we have to read
14 between the lines here.

15 In addition, they --

16 THE COURT: They do sell Hyundai in Korea too?

17 MR. LANGHAM: They do absolutely.

18 THE COURT: And China.

19 MR. LANGHAM: And in addition, this is somewhat hot
20 off the press, March 31st, 2015, one month and six days ago,
21 headline reads Robert Bosch GmbH agrees to plead guilty to
22 price fixing and bid rigging on automotive parts installed in
23 U.S. cars. They explain the participants in this conspiracy
24 were not located in just one country or region of the world,
25 and that collusion related to automotive parts was global in

1 nature.

2 Now, I will submit that the actual parts that
3 Bosch GmbH pleaded guilty to was conspiracy to fix prices and
4 rig bids for spark plugs, oxygen sensors and starter motors,
5 but just because they pleaded guilty to that doesn't mean
6 that their conduct didn't go all the way to windshield wipers
7 as well and this Court has addressed that in the past that
8 there are all sorts of reasons why a guilty plea or an
9 affidavit may not -- not an affidavit, an indictment may not
10 go to several different products.

11 THE COURT: The Court could say or could entertain
12 that there is a claim but how about jurisdiction, this is not
13 a 12(b)(6) motion, it is 12(b)(2)?

14 MR. LANGHAM: In terms of jurisdiction I think that
15 the jurisdiction over Bosch Korea I think our allegation that
16 we -- that Bosch Korea sold these windshield wiper products
17 into the United States and that they have pled guilty to a
18 conspiracy involving -- a conspiracy that, you know, even the
19 Korean authorities tell us that the companies recognize the
20 illegality of cartel meetings and the desire to keep the
21 meetings confidential, just because we can't find out exactly
22 where every single product was shipped and what was done with
23 them doesn't mean it didn't exist, and I think this screams,
24 if the Court is inclined, for additional discovery on
25 jurisdictional issues if the Court isn't already convinced

1 that our allegations are sufficient because there is
2 definitely enough in just this press release and the press
3 release that implicates Bosch GmbH that there was a
4 conspiracy that involved shipment into the United States of
5 products that were subject to this cartel.

6 With respect to Bosch GmbH and the Bosch America
7 plaintiffs, we do make specific allegations of conspiratorial
8 conduct against all three Bosch defendants. Indeed, the
9 Korean Fair Trade Commission directly implicated Bosch GmbH
10 and described Bosch as, quote/unquote, the German company
11 that manufactures wiper systems, they didn't talk about the
12 Korean company, they said on page 2 at the top Bosch
13 Electrical Driver Co. Limited, quote/unquote --

14 THE COURT: That's Bosch Korea, right?

15 MR. LANGHAM: It is but they say German company
16 that manufactures wiper systems.

17 Korean authorities also tell us that they
18 coordinated with the EU authorities to bring down the cartel
19 which again suggests this is not just limited to Korean
20 conduct.

21 Plaintiffs further allege that Bosch colluded with
22 Denso in response to an RFQ. If we look at the auto-dealer
23 plaintiffs' paragraphs 186 and 187, in 2003 Honda issued a
24 request for quote to Bosch and two other defendants. It is
25 plausible given its other collusive conduct as to windshield

1 wiper systems with Denso and the fact that the described
2 collusion as to this RFQ involved its co-conspirator Denso,
3 that Bosch voluntarily submitted a losing bid so that the --

4 MR. FELDBERG: Your Honor, he's not reading from
5 the complaint.

6 MR. LANGHAM: I'm reading from --

7 MR. FELDBERG: Your brief, and the complaint
8 doesn't say that.

9 MR. LANGHAM: Hmm --

10 MR. FELDBERG: The argument that it is plausible is
11 argument, it is not in the complaint. May I hand you the
12 complaint?

13 THE COURT: All right, all right, all right, I will
14 look at it. Counsel, I've got the quotes from the complaint
15 right here.

16 MR. FELDBERG: All right.

17 MR. LANGHAM: So plaintiffs' allegations of broad
18 industry-wide conspiracy and the sanctions of Bosch Korea and
19 Bosch GmbH's guilty plea support jurisdiction and support
20 plaintiffs' causes of action against all three Bosch
21 defendants.

22 THE COURT: All right. Thank you. Reply?

23 MR. FELDBERG: Very briefly, Your Honor. As in
24 reverse order, I noted during counsel's argument, and I
25 apologize for the interruption, the plausibility argument

1 came from the brief not from paragraphs 186 and 187, they are
2 the same as the paragraphs from the end-payors' complaint
3 that Your Honor has.

4 On the guilty plea, Your Honor, the guilty plea has
5 nothing to do with wipers. If we credit plaintiffs'
6 underlying theory, massive Justice Department investigation,
7 there is nothing about wipers in the guilty plea, it involves
8 entirely different parts, entirely different products than
9 are alleged in the wipers complaints against Bosch.

10 And finally the heart of counsel's argument as I
11 understood it was what -- was captured by a colloquy in which
12 the Court asked are you arguing that Bosch Korea sells
13 directly into the United States? Now, I'm not sure exactly
14 what counsel said. The answer to that is established by
15 Mr. Woo's reply declaration paragraphs 14 and 15 in which
16 Mr. Woo tells us that Bosch Korea sells wiper systems and
17 other products primarily to Korean companies pursuant to the
18 contracts and specifications of its customers and Bosch Korea
19 has no control over the sale, distribution or destination of
20 its customers' products or vehicles.

21 And fortunately for us the 6th Circuit in the
22 Bridgeport Music case has addressed that very issue because
23 it has held that mere knowledge that a plaintiff's product
24 will or in this case might, because we don't know that they
25 will, be sold in the United States does not demonstrate

1 purposeful availment. In other words, if as is the case
2 here, Bosch Korea sells wipers to a Korean company pursuant
3 to a contract and specification with that customer, and Bosch
4 Korea, as we know from Mr. Woo's declarations, does not
5 control what happens next, if some of those products are then
6 on sold into the United States, and we don't know that that
7 happened, but even assuming they did, under Bridgeport Music
8 that does not demonstrate purposeful availment and therefore
9 the court lacks specific jurisdiction. We have already --
10 plaintiffs have already conceded general jurisdiction.

11 The fact -- finally, counsel's argument that the
12 press release of the Korean Fair Trade Commission said it
13 relied on information from the United States is immaterial to
14 the jurisdictional analysis. The question before the Court
15 is whether under any theory of general or specific
16 jurisdiction the Court has jurisdiction over Bosch Korea, and
17 for all the reasons stated it is an entirely Korean business,
18 the Court does not have that jurisdiction.

19 THE COURT: All right.

20 MR. FELDBERG: Thank you, Your Honor.

21 THE COURT: Thank you. The next one is the fuel
22 injection.

23 MR. BAIRD: Good afternoon, Your Honor.

24 THE COURT: Good afternoon.

25 MR. BAIRD: We have an iron constitution.

1 THE COURT: We are going to move along here.

2 MR. BAIRD: Your Honor, my name is Bruce Baird and
3 I represent Keihin North America, which I will call Keihin or
4 KNA.

5 THE COURT: We call it KNA because we didn't know
6 how to pronounce it.

7 MR. BAIRD: Exactly, Your Honor. KNA is a
8 defendant in the fuel injection systems case and believes
9 that these complaints against it should be dismissed.

10 KNA is majority owned by Honda, 56 percent owned by
11 Honda, and Honda is the only carmaker to which KNA sells
12 and when I
13 say factual allegations I mean there is extensive boilerplate
14 but in terms of actual facts and that's
15 because it couldn't be more than that. Honda is their
16 customer.

17 There was once a DOJ investigation of KNA but it is
18 now over, officially closed without any action as of
19 June 16th, 2014, a year ago almost. That's Exhibit A to
20 KNA's memo in support of the motion. And based on these
21 facts KNA moves to dismiss the case against it for two
22 reasons. First, there is a well-known antitrust doctrine
23 named for the Supreme Court case Copperweld, holding that
24 when one company, like Honda here, owns more than half of
25 another, like KNA, and so by definition controls it, one of

1 those companies cannot conspire with or against the other
2 because they are for antitrust purposes the same company.
3 The owner, Honda, can ensure that the owned, KNA, has no
4 purpose or activity at odds with its own, and the owned
5 company, KNA, has no rational motive to cheat the owner with
6 whom its fortunes are bound up, that's especially true when
7 as here the owner is KNA's only customer.

8 Now, there is a second reason why the Court should
9 dismiss these cases, it is that the only conspiracy alleged
10 by the plaintiffs against KNA, a conspiracy they themselves
11 talk about as broad and market wide involving many
12 wrongdoers, many victims, with a common plan, common design
13 and overall plan cannot be connected to KNA in any way
14 through any inference Your Honor can draw from the
15 complaints, and I will discuss this in more detail. Your
16 Honor has in several opinions grappled with these instances.
17 And it is for two reasons here uniquely to KNA, there is no
18 other company before Your Honor that has these two facts.
19 DOJ has definitively in a letter closed its investigation of
20 KNA, and Honda controls KNA and is the exclusive customer of
21 KNA.

22 So let me address each of these two in more detail
23 starting with the Copperweld. So KNA's corporate disclosure
24 statement, which is a required part of the record before this
25 Court, reflects the Honda Motor Company owns a total of

1 56 percent of KNA. What that means, as the Supreme Court
2 said in the Copperweld case, is that Honda and KNA are not
3 separate entities for purposes of the antitrust claim. They
4 have unitary economic interests so they are treated as one
5 company so they can't conspire with or against each other to
6 create an antitrust defense, and that makes sense. I mean,
7 Honda controls KNA so what interest can KNA have in cheating
8 Honda? And, again, that's especially true where Honda is
9 KNA's only customer.

10 THE COURT: With Copperweld it is held that a
11 parent corporation and its wholly-owned subsidiary was not
12 legally --

13 MR. BAIRD: That's the way the doctrine started,
14 Your Honor, it was 100 percent in the case itself, that's
15 right. The cases since then, and we cited the cases in your
16 brief -- in our brief, have extended that only insofar as it
17 makes sense to the 50 percent margin. I mean, Your Honor,
18 you can argue less than 50 percent there is realistic control
19 and some cases have argued about that, but over 50 percent
20 there is really no question about control, it is as a matter
21 of elementary corporate law that's control, and the
22 controlling company can make the controlled company do what
23 it wants to ultimately, and also the controlled company has
24 no motive to do something other than what the controlling
25 company wants.

1 As the 7th Circuit said in a car company case,
2 Car Carriers against Ford Motor Company, allegations like the
3 plaintiffs here are implausible because they have to be
4 arguing. In that case it was a car carrier company that Ford
5 controlled would conspire against its own interest.

6 So what do plaintiffs say? They say basically four
7 things in response. First, they say don't consider the
8 corporate disclosure statement which is in the record before
9 this Court. They cite no authority and in our reply at
10 page 7 we cite cases making it clear that statement can be
11 considered and has been considered, but the plaintiffs don't
12 actually dispute the fact either and nor could they. Those
13 are easily ascertainable facts. 56 percent is the number.

14 Second, plaintiffs say the cases we cite are
15 factually distinct or were not decided on a motion to
16 dismiss. Again, they try to distinguish our authorities but
17 cite none of their own. Again, they have no authority for
18 the proposition that Copperweld cannot result in a dismissal,
19 and we cite cases in a written reply brief at page 8 saying
20 they can. There seems no doubt it is only a question of
21 whether the percentage is established.

22 Third, plaintiffs say that because KNA is not
23 wholly owned by Honda, and this is Your Honor's point, it is
24 simply affiliated and the Copperweld doctrine does not apply.
25 Again, the only authority they cite is a case involving a

1 34 percent owned affiliate, and we agree that a 34 percent
2 affiliate does not raise a Copperweld concern because
3 34 percent, unlike the 56 percent of KNA that Honda owns,
4 does not give the owner indisputable control, it is not to
5 say that a case like that might not move forward and by the
6 summary judgment time there might be evidence that there was
7 control, that's a different case. Copperweld stands for it
8 is really over 50 percent you don't need to go through that,
9 you can assume it because it is true as a matter of
10 elementary corporate law.

11 THE COURT:

12

13 MR. BAIRD: Against Honda is the notion. I mean,
14 it is even more observed than the usual Copperweld case.
15 Usually these cases are -- the controlled and the controlling
16 are conspiring with each other or said to be, alleged to be.
17 Here the allegation is

18 , that's -- we
19 found no case like that, Your Honor, and I submit that is
20 because that would be ridiculous to bring a claim like that.

21 THE COURT: There's a first for everything.

22 MR. BAIRD: I suppose that's right, Your Honor, but
23 there is no reason to infer it. There is reason to infer the
24 opposite, isn't there? There is reason to infer, if
25 anything, that this is not really happening and the

1 plaintiffs have to make an allegation that overcomes that.

2 Finally, plaintiffs claim to allege that

3

4 , and it is just wrong, there is no
5 factual allegation to that effect nor could there be. Honda
6 is the customer and Honda controls it, they work together, it
7 is a family. The only paragraphs in the complaint alleging

8

9

10 The Copperweld doctrine exists for a good reason,
11 it makes no sense for courts and litigants to delve into the
12 specifics of control when the control is over 50 percent.
13 That just makes sense, it is a matter of logic, there is no
14 question. And I submit that because Honda owns 56 percent
15 plaintiffs' two complaints against KNA should be dismissed.
16 The fact that KNA is alleged
17 and that KNA is Honda's only customer that just makes that
18 result more obvious.

19 THE COURT: All right.

20 MR. BAIRD: So that's the Copperweld argument, Your
21 Honor.

22 And then the second ground -- I submit if Your
23 Honor was to dismiss for Copperweld reasons there would be no
24 reason to dismiss with anything but prejudice because there
25 is no way to fix that.

1 Our second ground would be a dismissal without
2 prejudice I think. The second ground is that plaintiffs have
3 pleaded this broad, far-reaching conspiracy. Your Honor has
4 heard about that from a number of people in a number of
5 motions with many wrongdoers and victims, with an overall
6 plan, an overall design, all talking to each other and
7 dealing with each other, that's the plaintiffs' theory.

8 But in light of the DOJ's closing the investigation
9 of KNA and in light of KNA's relationship to Honda, they have
10 pleaded no facts that makes KNA's connection with that big
11 conspiracy plausible. Your Honor has considered the
12 plaintiffs' pleadings in a number of opinions, and as I read
13 them, and Your Honor will correct me if I'm wrong, you have
14 recognized that the concrete facts alleged by plaintiffs
15 relating to particular people, particular meetings,
16 particular bids would by themselves not be enough to support
17 this broad conspiracy that they allege. They really haven't
18 enough specific facts to allege an overall plan or a common
19 design, but Your Honor has fixed on some other factual
20 allegations they make.

21 The plaintiffs have pleaded specific facts relating
22 to a broad and continuing DOJ investigation, and they have
23 pleaded a number of guilty pleas, and they have pleaded some
24 facts relating to market structure, and Your Honor's ruled
25 that taken together, and you've done this in a number of

1 opinions, that taken together these additional facts allow
2 the Court to infer that a broader conspiracy is plausible.

3 But KNA's connection to this broad conspiracy is
4 not plausible because of facts that are specific to KNA and
5 to no one else that has been before Your Honor. These facts,
6 the letter proving that there is not now and will not in the
7 future be a DOJ investigation of KNA, and the relationship
8 between KNA and Honda mean that the inferences of a broad
9 conspiracy, which Your Honor has drawn as to others based on
10 the investigation, the pleas and the market structure cannot
11 be drawn as to KNA.

12 So let me look at these one at a time. Let's talk
13 about the investigation. Your Honor's ruled that the
14 existence of this continuing broad DOJ investigation is a
15 fact for which Your Honor may infer that a broad conspiracy
16 is plausible. Plaintiffs may not yet have concrete facts but
17 Your Honor said what is public now may not be all that
18 eventually becomes public, more facts may come out in
19 discovery or in another DOJ case, and the continuing
20 investigation may result in more facts. But if Your Honor
21 knew for a fact that a company is not now and would not be in
22 the future part of the investigation the inference of a
23 connection to a broad conspiracy Your Honor has drawn as to
24 others from the existence of that investigation you could not
25 draw, you would not, and there is nothing from which the

1 inference could be drawn. To hold otherwise would purely be
2 to allow an inference of guilt by association. Unlike any
3 other company Your Honor's yet ruled on, that's KNA's
4 position.

5 Exhibit A is this June 16th letter from 2014 that I
6 mentioned, they -- DOJ definitively closes their
7 investigation. Now, I'm not claiming as plaintiffs say at
8 one point in their brief that Your Honor should infer from
9 the closing of a case that KNA is innocent, that's not what
10 we are asking, we are not asking Your Honor to draw an
11 inference from that. We are just saying the inference that
12 the plaintiffs want you to draw, the inference there is a
13 connection -- because of the investigation there is a
14 connection to a broader conspiracy that that inference can't
15 be drawn. Your Honor should draw no inference from that,
16 it's out of the case as far as Keihin is concerned there is
17 no investigation, it is closed, so in the future there will
18 not be any more from that investigation with respect to
19 Keihin, and there were no charges, no action of any kind.

20 Your Honor has also mentioned guilty pleas as
21 supporting the inference of a broad conspiracy with an
22 overall plan, a common design, and KNA has pled guilty to
23 nothing, no one has pled guilty to doing anything with KNA,
24 there is no connection between KNA and the guilty pleas.
25 Whatever the guilty pleas may say about other companies it

1 would be nothing but guilt by association to infer from
2 someone else's guilty plea to other parts with other
3 companies that KNA is itself involved in a common design, an
4 overall plan.

5 THE COURT:

6
7 MR. BAIRD: Well, Your Honor, I'm going to get to
8 that. I think that's an important question. What I say is
9 it doesn't bear on the overall design, the common plan, it
10 doesn't bear on the big conspiracy because

11

12

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14 . And if Your Honor
15 sees this Your Honor might well say all right, I should
16 dismiss without prejudice, there may be a conspiracy here
17 that they can plead,

18 -- based on these allegations. But what I'm talking
19 about here, Your Honor, is a connection between

20 and the overall plan, the common design, that we
21 know is required for the big conspiracy.

22 Your Honor has done multiple conspiracy cases, you
23 know there are just differences. There might be one
24 situation in which several smaller conspiracies might be
25 appropriate, another situation in which a bigger conspiracy

1 might be appropriate. Here there is no connection alleged,
2 and I think -- the way I read Your Honor's prior decision you
3 have recognized that might be an issue for the plaintiffs but
4 you have said to yourself and written that because there is
5 this investigation and because there are these guilty pleas
6 and because of the market structure it pushes it over the
7 line, nudges it over the line into plausibility, and that is
8 what Your Honor has said.

9 What I'm saying to Your Honor is that those extras
10 that push this from a small conspiracy to being a part of the
11 overall plan just don't exist as to KNA because of the DOJ
12 letter and also because of the relationship to Honda. If you
13 think about market structure, the notion of market structure
14 is that you have the opportunity to conspire with others.
15 Well, that's not really KNA's situation, they've only got one
16 customer and they are controlled by that customer. If
17 anything, the natural inference is that they are not trying
18 to cheat Honda, that's the -- that would be the natural
19 inference.

20 Plaintiffs' response is that the complaints are
21 replete with factual allegations but when they list the
22 factual allegations that they say their complaints are
23 replete with they mention the investigation, the guilty pleas
24 and the market structure, which I have just been talking
25 about. They also mention nonfactual boilerplate allegations

1 of common purpose, communications, secret meetings, and
2 those -- the reason I say those are boilerplate, they don't
3 mention any specifics and they don't mention KNA. They
4 mention the true but irrelevant allegation that KNA sells
5 parts of fuel injection systems, they don't mention it sold
6 only to Honda.

7 And finally,

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THE COURT: Okay.

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MR. BAIRD: Plaintiffs end that section of their
brief, Your Honor, with a revealing misunderstanding of the
law. They try to distinguish authorities for the undeniable
proposition that all the accused conspirators must have
agreed on an overall plan by saying that they are not
alleging a hub-and-spoke conspiracy, which is interesting
because it is really the only kind of conspiracy they have.
They say they are not alleging a hub-and-spoke conspiracy in
which -- like in Kotteakos in which there is a central
conspirators and others at the sides who don't know each
other but they know there is some kind of common plan. They
disclaim that. They say in their brief that really they are
alleging a broad conspiracy, everyone knows everyone,

1 everyone talks to everyone, everyone communicates with
2 everyone, that's fine if you can prove it, but as to KNA I
3 submit they just haven't begun to pick up that burden.

4 There is not a factual allegation

5

6 . With control by Honda and the DOJ closing its
7 investigation, I submit there is no inference possible that
8 KNA is part of something broader.

9 Plaintiffs' argue in a single sentence that the DOJ
10 letter should not be considered. I just want to briefly
11 mention that, Your Honor. It is an argument they seem to
12 recognize should not succeed because it is integral to their
13 claim, they claim a continuing investigation. Well, DOJ says
14 as to KNA there is no continuing investigation, and it is
15 also a public record once it is sent to KNA, and we cite
16 cases for that in the reply brief.

17 We have a third point in our brief that I will just
18 rely on my papers for, Your Honor.

19

20

21 . I commend our papers to Your Honor
22 on that one.

23 So, Your Honor, for all of those reasons I submit
24 that whether it is with or without prejudice, for the
25 Copperweld reason or the conspiracy reason, we really ask

1 Your Honor to dismiss this complaint. This is a company
2 which --

3 THE COURT: All right. That's enough.

4 MR. BAIRD: Thank you, Your Honor.

5 THE COURT: Response? Thank you.

6 MR. OCHOA: Good afternoon, Your Honor. Omar Ochoa
7 with Susman Godfrey on behalf of the end payors and auto
8 dealers.

9 To start, Your Honor, any percentage that Honda may
10 own of KNA was not in the pleadings, and KNA has offered no
11 affidavits or corporation documents in support of that
12 assertion, and the same is true with that assertion that
13 Honda is the only customer of KNA, there is no affidavit,
14 there is no document in support of that, so there really is
15 no information in front of this Court, properly before this
16 Court, to consider on a motion to dismiss.

17 But more important the plaintiffs have expressly
18 alleged that KNA's conspiratorial conduct affected more than
19 just Honda vehicles. Plaintiffs allege that KNA's
20 involvement in a global price-fixing conspiracy and provides
21 specific examples of price fixing and bid rigging of Honda
22 vehicles was purely an illustrative example, but those
23 examples no way limit the scope of KNA's alleged conduct that
24 the plaintiffs have alleged in their complaints. Simply put,
25 KNA's arguments regarding Honda's ownership percentage in KNA

1 are misleading because the ownership percentage of KNA no
2 matter what that number is doesn't matter or doesn't warrant
3 dismissing plaintiffs' claims against KNA.

4 THE COURT: Well, what if -- I mean, what if KNA --
5 excuse me, Honda is its only customer? I suppose now you are
6 saying you don't know that.

7 MR. OCHOA: Right, we don't know that and we have
8 no way of knowing that. Again, KNA themselves have not put
9 forth any evidence to suggest that other than an assertion in
10 their brief. But KNA has never asserted that Honda actually
11 controlled KNA's pricing or any aspect of KNA's actual
12 operations. And KNA, as Your Honor already pointed out, has
13 not asserted and cannot assert that it is a wholly-owned
14 subsidiary of Honda, which was the test in Copperweld.

15 Regarding the linkage to the broader conspiracy,
16 Your Honor, KNA's entire argument rests on its assertion that
17 the DOJ concluded its investigation of KNA and did nothing,
18 but as this Court has previously pointed out, we can't make
19 any conclusions from that information because there are many
20 reasons why the government would close its investigation, not
21 simply because KNA did nothing wrong. The fact of the matter
22 is is that the declaration only really shows that the
23 government investigated KNA for potential antitrust activity
24 that the plaintiffs' alleged, and if that was all that the
25 plaintiffs relied on, that an investigation was done by the

1 DOJ, there might be some danger of simple guilt by
2 association, but far from that the plaintiffs have actually
3 alleged guilt by specific example. In the complaints
4 plaintiffs describe specific instances of KNA's collusive
5 conduct, and on top of those --

6 THE COURT: What are you talking about, the
7 meetings with Denso?

8 MR. OCHOA: Yes, Your Honor, yes, Your Honor, the
9 meetings with Denso specifically, and this is the
10 confidential information that was sealed in the response, but
11 specifically for RFQs that are issued for the Acura model
12 year 2009 and the Accord model year 2008, and conversations
13 that they had with Denso --

14 THE COURT: Both of these are Honda?

15 MR. OCHOA: Yes, both of those are Honda vehicles.
16 Again, plaintiffs use these Honda examples as illustrative
17 examples but that doesn't limit the broad allegations made in
18 the complaint that KNA's conspiratorial conduct affected more
19 than just Honda.

20 THE COURT: But it would if its only customer was
21 Honda, so I guess we are getting --

22 MR. OCHOA: Exactly. If that's its only customer
23 that's something completely different but, again, we don't
24 know that, there is no evidence before this Court other than
25 an assertion made by KNA's conduct -- by KNA's counsel in its

1 brief. And plaintiffs have provided a host of other
2 allegations including that the fuel injection systems market
3 is susceptible for colluding, the defendants conspired with a
4 single purpose to extract higher prices, and that KNA was
5 part of this global conspiracy.

6 KNA says that it is unique because it never pleaded
7 guilty to price fixing of fuel injection systems but that's
8 not unique. Other defendants in other cases have made the
9 same argument unsuccessfully, co-counsel, Ms. Tran, mentioned
10 Lear, but there is also Tokai Rika in the wire harness cases
11 and SKS U.S.A. in the bearings cases.

12 And finally and briefly, Your Honor, to the third
13 point that was made, that KNA's counsel relied on its papers
14 for, end payors will just say that it is unclear as to what
15 relief is actually being sought by that specific argument, it
16 is unclear -- the briefs suggest that the Court should
17 dismiss end-payors' allegations, this may have been simply an
18 unartful way of requesting that those allegations be
19 stricken. If that's the case that's an incorrect or an
20 improper request for a few reasons. It fails to appreciate
21 the context of those specific allegations, it basically is an
22 illustrative example again of a market-wide conspiracy and
23 not necessarily a claim all on its own, it only supports
24 end-payors' and auto-dealers' complaints.

25 THE COURT: Would one OEM know what another OEM

1 paid for a particular part? It's a little off topic but I'm
2 curious because --

3 MR. OCHOA: Sure. I'm not certain, Your Honor. I
4 don't believe I can provide an answer at this point. But
5 that only makes the further point that this Court should
6 allow this case to go forward so the parties can actually
7 discover this information and determine it, but on the
8 pleadings and on the allegations made in the complaint before
9 the Court all of this is sufficient to establish that the
10 end-payor plaintiffs and the auto dealers have sufficiently
11 pled their claims against KNA.

12 THE COURT: Thank you.

13 MR. OCHOA: Thank you.

14 THE COURT: Brief reply?

15 MR. BAIRD: Your Honor, thank you. If I may
16 briefly, I think the plaintiffs have the shoe on the wrong
17 foot. It is not up to Honda to prove that Honda is its only
18 customer, although it is, it is up to the plaintiffs to
19 allege something beyond that and they don't. That's the very
20 reason why some specific factual allegations are necessary in
21 a complaint, that that's what you have to grapple with,
22 what's specifically alleged. What's specifically alleged is
23 only Honda, that happens to be the fact, if it makes a
24 difference to Your Honor we could have discovery very briefly
25 on that particular point and within a week could establish

1 that, but I submit it is not necessary because the
2 allegations don't go there. The allegations are not --
3 plaintiffs have no idea, and the fact of the matter is that
4 Honda is the only customer. Your Honor can infer that also
5 by the relationship, that's a 56-percent owned company.
6 Honda -- Keihin North America does whatever Honda wants it to
7 do, and there are more facts beyond the record, but the
8 reason for that Copperweld doctrine is once you are over
9 50 percent you are really talking about control and
10 everything else is gravy.

11 THE COURT: All right.

12 MR. BAIRD: Thank you, Your Honor.

13 MR. OCHOA: Very briefly, Your Honor. I'm sorry.
14 Very briefly.

15 If the parties were to go forward with the
16 discovery over Honda as a customer, I believe we would also
17 need discovery over Honda's actual control over the
18 operations of KNA and not have it simply be limited to
19 whether or not Honda is the sole customer of KNA. Thank you.

20 THE COURT: Okay. I have two more, they both
21 really are Delphi motions. Do you want to have a break
22 before we argue these motions?

23 MS. ZWISLER: I'm fine, Your Honor, but if you or
24 the court reporter need a break I'm fine with that too.

25 THE COURT: I mean, I would like to give you your

1 full time to argue it but I don't know that we can go on for
2 another half hour without something.

3 MS. ZWISLER: Okay. Then let's pause, Your Honor,
4 it is very important obviously.

5 THE COURT: Let's take -- do you think you can grab
6 a sandwich downstairs in a half hour? Do you think we can do
7 that? Try. We will wait for you to come back. Thank you.

8 MS. ZWISLER: What time, Your Honor?

9 THE COURT: How about 2:00.

10 (Court recessed at 1:26 p.m.)

11 — — —

12 (Court reconvened at 2:02 p.m.; Court, Counsel and
13 all parties present.)

14 THE LAW CLERK: All rise. You may be seated.

15 THE COURT: Okay. We are all refreshed to begin.

16 MS. ZWISLER: Thank you, Your Honor. Peggy Zwisler
17 from Latham & Watkins on behalf of the Delphi defendants.

18 I have to confess I feel a little bit like the last
19 kid in a piano recital and only her parents really want to
20 hear her.

21 I have some slides here that I think might move
22 things along and also keep us awake after lunch. I would
23 like to pass a couple up to you, Your Honor, but they will be
24 on the screen.

25 THE COURT: All right.

1 MS. ZWISLER: In an unusual display of chivalry I
2 already gave them to the plaintiffs.

3 Your Honor, our motion presents a question that you
4 have decided five times in favor of the defendants and I'm
5 hoping to make it six. The question is -- I'm going to
6 address --

7 THE COURT: You are keeping count? I don't have
8 any count at all.

9 MS. ZWISLER: Believe me, you are going to see all
10 five of them on these slides. I'm going to address both
11 motions that are before you. They have two people that they
12 need to use to combat our case but I have -- I'm going to
13 address both of them.

14 So the question is do you have personal
15 jurisdiction over two completely foreign entities, one of
16 which is a pure holding company and the other of which has
17 absolutely no contacts with the U.S. and doesn't ship
18 products into the U.S. And the answer to that question is
19 no.

20 Let me show you a schematic of the two
21 defendants -- the Delphi defendants that are in this case.
22 So there are no Delphi U.S. defendants in this case at all.
23 The plaintiffs initially named one when they filed the
24 complaint in December, but they dropped it voluntarily after
25 they filed their con -- when they filed their consolidated

1 amended complaint, so this case has two completely foreign
2 entities.

3 And also unlike many of the other cases that you
4 have here, I think this is important as well, neither these
5 two entities nor any Delphi entity in the U.S. or anywhere in
6 the world has been charged or pled guilty to price fixing any
7 product, let alone valve timing control devices, which is the
8 product that this case is about, and on those facts in
9 addition to the ones we will discuss you should dismiss these
10 cases against these two defendants.

11 Now, this slide depicts the organizational
12 structure of these clients. DPSK is Delphi Powertrain System
13 Korea, that's in the corner there. Now, DPSK is a joint
14 venture -- a Korean joint venture. It is partially owned by
15 a Korean company, an independent Korean company, who is not a
16 defendant in the United States. The rest of its shares are
17 owned by another Delphi entity, Delphi France Holding.
18 Delphi France is not a defendant in this case. Like all of
19 the rest of the defendants, Delphi defendants didn't plead
20 guilty, no charge, no nothing. Those are the companies that
21 actually own DPSK.

22 The other Delphi defendant in this case is
23 Delphi L.L.P. in the United Kingdom. The L.L.P. is a pure
24 holding company; it has no employees, no assets, no
25 operations, no functions, its principal place of business for

1 the last three years and change has been in Kent, England,
2 not in the United States. It is not the ultimate global
3 parent of the Delphi entities.

4 Now, the entity that is relevant -- loosely
5 relevant to this case is DPSK, it's the entity that
6 manufactures valve timing control devices that's the
7 defendant here. It is in Korea, and it makes valve timing
8 control devices exclusively in Korea. It sells them only to
9 Korean car manufacturers. So you can see on this schematic
10 it sells to Hyundai and Kia. They do something with them
11 after that, the record doesn't tell us what exactly except
12 that the plaintiffs claim they come to the United States.
13 DPSK does not ship or sell valve timing control devices to
14 the U.S. at all, and all of this is supported by the two
15 declarations of our witness, James Rim.

16 There are 17 paragraphs of things that he says
17 there that are similar to what Mr. Feldberg described about
18 his Korean entity, and I won't go through them in the
19 interest of time. The central ones are they exclusively sell
20 in Korea, they exclusively make in Korea, they do not sell to
21 the United States, they do not ship to the United States, and
22 they do not control the decisions of Hyundai or Kia or
23 anybody else as to where their parts are going to go or where
24 the cars they have got are going to be shipped. In fact,
25 Mr. Rim says we don't design our parts for particular

1 countries.

2 DPSK structurally then is exactly like two other
3 defendants in this huge MDL that you dismissed on personal
4 jurisdiction grounds, S-Y Europe and Ichikoh. So here is a
5 schematic of S-Y Europe. S-Y Europe, like DPSK, was a joint
6 venture of two non-defendant entities. I'm not sure how
7 relevant that is but it is like DPSK. S-Y Europe, like DPSK,
8 manufactured parts and sold them to companies in Europe, car
9 companies in Europe, and they shipped them or the cars that
10 had them elsewhere. S-Y Europe, like DPSK, did not control
11 the decisions of those car manufacturers of where the parts
12 went or where the cars went. And DPSK like -- or S-Y Europe,
13 like DPSK, did not ship or sell directly to the U.S., and
14 Your Honor rightly held no personal jurisdiction, no personal
15 jurisdiction, totally foreign events.

16 The second case that this is just like is Ichikoh,
17 you just decided that on March 4th. Ichikoh is in Japan.
18 Like DPSK, Ichikoh is a foreign entity. Like DPSK, it sells
19 only to foreign car manufacturers. We have got the Japanese
20 one in the picture there. What those companies do after the
21 sale, it is not up to Ichikoh, Ichikoh did not control those
22 decisions, and Ichikoh, like DPSK, did not itself sell or
23 ship into the United States. So this Court rightly held
24 there no personal jurisdiction over that company.

25 So the question on this motion is given that DPSK

1 is just like S-Y Europe and Ichikoh, what are the plaintiffs
2 giving you to make your life difficult and change your mind?
3 What are they telling you? They say you have jurisdiction in
4 the first instance over DPSK because they are going to tell
5 you you have jurisdiction over that Nothinberger (phonetic)
6 Company in the United Kingdom which is called Delphi L.L.P.
7 So they are saying if you have jurisdiction over the L.L.P.
8 then they can make an alter-ego argument and claim that you
9 have jurisdiction over the Korean entity.

10 Now, I'm going to tell you in a minute why you
11 don't have jurisdiction over the holding company but the
12 first point why you don't have general jurisdiction over DPSK
13 is because the Supreme Court last year in Daimler vs. Barnum
14 held that general jurisdiction in these kinds of global
15 enterprise cases has to be looked at on the basis of the
16 conduct of each party separately.

17 So let me tell you about that because it is
18 relevant to both cases. Daimler vs. Barnum involved
19 Mercedes-Benz U.S. so that's a subsidiary of the global
20 company Daimler-Benz. So the federal court in California
21 undeniably had jurisdiction over Mercedes-Benz U.S. The
22 plaintiffs alleged that they could get jurisdiction over
23 Daimler, a German company, by virtue of the contacts of its
24 U.S. sub and, in fact, that the parent controlled in some way
25 the U.S. sub, and the Supreme Court said unanimously, which

1 in this day and age is a miracle, no, that doesn't work.
2 They held that the -- the majority held, there was a
3 concurring opinion but it was unanimous, that for general
4 jurisdiction you have to analyze the conduct -- contacts
5 rather, the minimum contacts of each company separately.

6 So the fact that the Court had jurisdiction over
7 Mercedes-Benz U.S. and even if you imputed those contacts,
8 imputed the contacts to Daimler in Germany, no jurisdiction
9 over Daimler in Germany. So that means the mere fact even if
10 you had jurisdiction over the L.L.P. that would not mean you
11 have jurisdiction over DPSK in terms of lose control
12 allegations. The commentators are saying that the alter-ego
13 theory is dead after Daimler. You don't need to get there
14 because I'm going to tell you in a minute why you don't have
15 jurisdiction over the L.L.P.

16 So what's the real way that plaintiffs are trying
17 to get you to get jurisdiction over the Korean entity that
18 doesn't sell or ship in the U.S.? Specific jurisdiction.
19 Now, they tried again the conspiracy theory of jurisdiction
20 and as Mr. Feldberg told you, you rejected that five times.
21 They tried the Calder effects theory, you rejected that five
22 times. But they tried something different on purposeful
23 availment on our case, and what they say is that DPSK put its
24 products into the stream of commerce and they say there are
25 facts that are different here and that means you should find

1 that DPSK specifically targeted the U.S., that's their
2 primary argument. And the argument they are making there,
3 the specific targeting of the U.S., is based on a
4 confidential factual allegation but I'm not going to go into
5 it in detail, they can if they want to. They claim that they
6 have sufficiently alleged that DPSK specifically targeted the
7 U.S. because generally speaking, not with respect to DPSK,
8 car manufacturers who put out RFQs sometimes say the
9 destination of the vehicle ultimately. Allegation one.

10 Now, I should pause here and say none of this is in
11 the complaint, they would have to amend to allege these.
12 This is kind of a hail Mary pass, if you ask me.

13 So allegation one, generally speaking some RFQs say
14 where the cars are going. Allegation two, an alleged
15 co-conspirator of DPSK had an RFQ from a car manufacturer in
16 Korea and was, quote, aware, close quote, that the cars were
17 coming to the U.S. On the basis of these two allegations,
18 plaintiffs are saying Delphi put its products in the stream
19 of commerce and specifically targeted the U.S. That's a very
20 attenuated allegation but it is also not sufficient as a
21 matter of law, and it is also something you have already
22 decided so you shouldn't permit them to amend to add those
23 RFQ allegations anyway.

24 Why is that? That's because those allegations are
25 really not different than the S-Y Europe allegations that you

1 already rejected on this subject. S-Y Europe, as I said, was
2 a joint venture; it was created to sell products to BMW. The
3 plaintiffs in that case alleged that BMW imported 250,000
4 vehicles into the United States so essentially they alleged
5 S-Y Europe knew or must have known that its products were
6 going to the United States and that means that S-Y Europe
7 specifically targeted the U.S. Your Honor rejected that, and
8 you said --

9 THE COURT: Not that they knew they would end up in
10 the United States, some of them.

11 MS. ZWISLER: Right, they rejected that as a
12 factual basis for permitting specific targeting. Really
13 knowledge alone is not enough. The mere fact that you knew
14 or should have known they were going there is not specific
15 targeting. So you could ask yourself what is enough, and
16 again I don't want to repeat what Mr. Feldberg said but the
17 three cases in the 6th Circuit that you cited in S-Y Europe,
18 including actually a Supreme Court case, hold that what's
19 necessary beyond knowledge that your products might get there
20 is an affirmative act, some affirmative act. The three cases
21 are Bridgeport, Schelling and Fortist.

22 In Bridgeport the court found no personal
23 jurisdiction over a foreign defendant. The defendant had
24 contracted with another party who shipped into the forum.
25 The Court said that because the informed defendant did not

1 affirmatively require its contracting party to ship to the
2 forum there was no targeting. So what the 6th Circuit said
3 is there has to be an allegation of an affirmative act, you
4 have to require your contracting party to affirmatively ship
5 into the forum. Okay. So there was another defendant there,
6 and it shows you the difference.

7 The other defendant had a contract with its
8 contracting party to ship products into the forum, and that
9 contract said essentially I will ship into all 50 states of
10 the United States. That defendant, the 6th Circuit said, did
11 specifically target the U.S. because the contract required
12 the intermediary to ship into all 50 states. So Bridgeport
13 shows you you have to have an affirmative act of targeting.
14 So here what that would mean is plaintiffs would have to
15 allege and establish for purposes of a personal jurisdiction
16 motion that DPSK required its Korean customers to ship cars
17 with its products or its products alone into the U.S. and
18 there is no allegation of that. There is no allegation of an
19 affirmative act of targeting, which in this context would be
20 a contractual obligation to ship to the U.S.

21 The other two 6th Circuit cases are similar.
22 Schelling involved power saws made by I believe a German
23 company who had a U.S. distributor. That company while it
24 distributed in the U.S. and itself did not sell affirmatively
25 came to the United States and marketed the product here, so

1 the 6th Circuit said that's specific targeting.

2 The last case, Fortist, involves ships on the Great
3 Lakes. In this case the contract between the foreign
4 defendant and the U.S. specifically required the defendant to
5 design the ship for the Great Lakes and for docking at
6 Toledo. So the Court held that's specific targeting, they
7 took an affirmative act to require the product essentially to
8 be fit for distribution in the U.S.

9 So what these cases mean for the main argument,
10 this RFQ argument that the plaintiffs have now put into their
11 brief and want to put into their complaint, is that DPSK
12 would have had to require its customers to ship to the U.S.,
13 and in the absence of that allegation or without more than
14 knowledge this case is no different than S-Y Europe and the
15 conclusion that you reached there on the stream of commerce
16 theory.

17 THE COURT: Okay. Basically knowledge is not the
18 equivalent of targeting?

19 MS. ZWISLER: That's right, and that's what you
20 held in S-Y Europe, and those three cases that I just
21 described, which are 6th Circuit cases, have that in them and
22 they draw that out of the Supreme Court trilogy of cases that
23 you cited in your opinion.

24 THE COURT: I also take it these Hyundais or Kias,
25 they could go to any country --

1 MS. ZWISLER: They could.

2 THE COURT: -- they just happen also to go to the
3 United States?

4 MS. ZWISLER: Yes, and what our evidence shows,
5 Mr. Rim's affidavit says we don't design our products for the
6 U.S., there is no allegation even actually of knowledge that
7 DPSK knew that its products were going to the U.S. except for
8 this RFQ that the co-conspirator allegedly was aware about,
9 but what I'm saying even if that's true about DPSK, let's say
10 that DPSK knew from the RFQ, oh, these products are going to
11 go to the United States, knowledge alone is not enough. That
12 contract would have to say to Kia and Hyundai you must
13 distribute this product to the U.S. That's what Bridgeport,
14 Schelling and Fortist are holding, knowledge alone is not
15 enough.

16 Okay. Let me spend a minute on the L.L.P. which is
17 the holding company. As a matter of organization structure
18 the L.L.P. -- Delphi L.L.P. is not different than the three
19 other holding companies that you already dismissed. So the
20 L.L.P. is a true holding company. In some of the other
21 cases -- the three that I'm talking about are Leoni, AB SKF
22 and Schaeffler AG, you dismissed all three of those holding
23 companies on personal jurisdiction, they are cited in our
24 brief. A couple of them actually were functioning holding
25 companies; for example, they had administrative services that

1 they ran for their subs.

2 Delphi L.L.P. is not even that, it is a U.K.
3 holding company that doesn't manufacture or sell products
4 anywhere in the world, any products. It is not incorporated
5 or licensed in the U.S. It doesn't control its U.S.
6 subsidiary because it has no employees. How could a paper
7 company control anybody? And, of course, the U.S. indirect
8 subsidiary is no longer a defendant in the case, that's also
9 a different circumstance but in my judgment not material.

10 In Leoni, Leoni was a German holding company that
11 did not manufacture or sell any products, and on the evidence
12 there that was submitted you said it doesn't control the
13 co-defendant U.S. subsidiary.

14 Same story with Schaeffler or -- the first one is
15 AB SKF, it was a Swedish holding company and does not
16 manufacture or sell any goods, doesn't control the
17 co-defendant U.S. subsidiary.

18 The third one is Schaeffler, exactly the same, a
19 German holding company that does not manufacture or sell any
20 goods and does not control its U.S. defendant.

21 So here applying these three cases to our situation
22 we are a holding company, we don't manufacture or sell any
23 products and we can't possibly control the L.L.P., cannot
24 possibly control any entity because there is no people
25 involved in it, control is a factual issue which means the

1 entity is making decisions for some other entity. Our
2 evidence, here and there is a declaration from Isabelle
3 Vagne, V-A-G-N-E, that supports this, the L.L.P. doesn't
4 control anything, it doesn't do anything, it has no
5 functions, no operations, no assets, no money, so it doesn't
6 control either. The jurisdiction over the L.L.P. then is
7 controlled by those three cases which you have already
8 decided.

9 Now, plaintiffs have given you no legal argument
10 why you should change your mind and find a holding company
11 with no functions is subject to U.S. jurisdiction. They
12 don't give you any legal argument to that effect. In fact,
13 it had become kind of a pyrrhic victory because it doesn't
14 have any documents, I mean, it is not a thing, but what they
15 have given you is a fact.

16 THE COURT: What is it, is it a robot?

17 MS. ZWISLER: No, it is a paper, it is a square on
18 a piece of paper, and actually -- actually it is not the --

19 THE COURT: A website?

20 MS. ZWISLER: Yeah, it is like -- it was created --
21 it is a long story but it is created as a result of -- Delphi
22 went into bankruptcy, as you probably know, at one point, and
23 when it came out of bankruptcy it had a number of iterations
24 and --

25 THE COURT: Did the L.L.P. take it over or --

1 MS. ZWISLER: Not exactly. Basically it is a
2 partnership in the United Kingdom that has an ultimate parent
3 called Delphi P.L.C. -- Delphi Automotive P.L.C., that's
4 actually the ultimate global parent.

5 THE COURT: Wasn't that created -- or that was
6 created before and then Delphi L.L.P. became --

7 MS. ZWISLER: I'm not sure about the time and it is
8 not alleged in the complaint, but what I'm saying is it
9 doesn't have any functions, it is an organizational
10 structure, not a thing.

11 Now, plaintiffs have, as I said, given you one fact
12 that is relevant to this argument, which is that after -- so
13 the entities emerged from bankruptcy in 2009 and after a
14 number of other steps the L.L.P. was created, and from
15 October 2009 to November 2011 the L.L.P. listed its principal
16 place of business as Troy, Michigan. It was not an
17 operational entity at that time either but it listed it on a
18 piece of paper as Troy, Michigan. In November of 2011 when
19 the complete -- reorganization was complete it listed its
20 principal place of business as Kent, England and that's where
21 it has been ever since three and-a-half years ago.

22 So the question is does a holding company that for
23 25 months, three and-a-half years ago, listed in Troy,
24 Michigan as its principal place of business mean that you
25 have general jurisdiction over it? The answer to that is no.

1 General jurisdiction is continuous, systematic contacts with
2 the forum, that's how the Supreme Court defines it.
3 Principal place of business is an indicia of one of those
4 continuous systematic contacts.

5 In the absence of any other facts the mere legal
6 listing of a principal place of business doesn't tell you
7 anything about continuous systematic contacts in the face of
8 the evidence that this entity had no functions, number one.

9 Number two, it certainly doesn't have a principal
10 place of business here today. That means the case is
11 governed by the Sioux Breeders case in this district, that's
12 S-I-O-U-X. That case involved an operational company that at
13 one point had its principal place of business in Michigan.
14 It moved. The court found -- this court found, and I forget
15 which judge it was, that it did not have personal
16 jurisdiction over Sioux Breeders anymore because its
17 principal place of business had been outside Michigan or
18 outside of the forum for over three years, so the contacts
19 were no longer continuous and systematic.

20 THE COURT: That was a Judge Ludington case I
21 think?

22 MS. ZWISLER: I think it was. So that case is
23 actually more -- our case is actually less persuasive for
24 personal jurisdiction and general jurisdiction than that one
25 because this entity didn't operate anything when it was here.

1 There is a U.S. entity that's here, it's the operational
2 entity. This square on a piece of paper didn't do anything
3 except list its principal place of business, and that ended
4 three and-a-half years ago. Under Sioux Breeders it is for
5 certain that entity is not subject to the general
6 jurisdiction of this Court. Plaintiffs in their brief didn't
7 address or distinguish the Sioux Breeders case at all.

8 So let's go back in sum here and look at the two
9 entities that they are trying to get you to exert
10 jurisdiction over. There is no middle U.S. entity in that
11 map. You've got the holding company that has no functions
12 and has been in the U.K. for three and-a-half years. You
13 have the DPSK entity unrebutted facts that it did not sell or
14 ship any products into the U.S., and even if it had knowledge
15 that the ultimate products would go to the U.S. there is no
16 evidence or allegations of an affirmative targeting.

17 Plaintiffs attempt to create jurisdiction on the
18 basis of these facts as essentially saying I think that this
19 Court could exercise jurisdiction over any company in the
20 world upon an allegation that it was involved in the
21 conspiracy, and keep in mind there is nobody here that has
22 pled guilty or been charged even. There has got to be more
23 than what they have got.

24 The Supreme Court said general jurisdiction and
25 personal jurisdiction, federal courts are courts of limited

1 jurisdiction and exercising jurisdiction over a
2 nonfunctioning holding company or a company that ships
3 nothing into the U.S. would exceed those limits.

4 THE COURT: Okay.

5 MS. ZWISLER: Thank you, Your Honor.

6 THE COURT: Mr. Reiss?

7 MR. REISS: Good morning, Your Honor -- good
8 afternoon I guess. My name is Will Reiss and I will be
9 speaking for the end-payor plaintiffs and I will be
10 addressing the automobile-dealer plaintiffs as well.

11 Before I get into the thrust of my argument I think
12 it bears emphasizing that we have alleged specific examples
13 of Delphi Korea's anti-competitive conduct that has harmed
14 American consumers and American businesses. Those are our
15 plaintiffs in this case, American businesses and consumers
16 that were injured.

17 In telling you Delphi Korea they haven't filed a
18 Twombly motion, they don't contest the sufficiency of our
19 allegations, they are just moving to dismiss for lack of
20 jurisdiction, and I'm not undermining that argument, but it
21 is notable that unlike virtually every single case they cite
22 we have American plaintiffs here, we have the Department of
23 Justice that has repeatedly said that the conspiracy for
24 which we have alleged specific examples of Delphi Korea's
25 participation affected more than 25 million automobiles

1 purchased by Americans. Delphi Korea knows full well, unlike
2 many of these other cases, Korea doesn't have class actions
3 for the U.S. consumers and businesses injured. If Delphi
4 Korea is dismissed here it is game over. They escape, and
5 those who were injured have no opportunity to vindicate their
6 rights in the United States, and I think that's an important
7 policy consideration that is distinguishable from a number of
8 the other cases that Delphi Korea cites.

9 THE COURT: But their jurisdiction is not a policy
10 issue.

11 MR. REISS: Jurisdiction is not a policy issue but
12 one of the tests for specific jurisdiction is whether it is
13 reasonable for the foreign defendant to come before the
14 United States courts or for whatever the jurisdiction is at
15 issue, and there are different factors that are balanced in
16 terms of determining whether in fact jurisdiction is
17 reasonable. But I want to get into the elements of specific
18 jurisdiction because you are right, there are other factors
19 that need to be considered, and I think we have strong
20 arguments as to why Delphi Korea should be subject to the
21 United States' jurisdiction.

22 There are a number of arguments we raise in our
23 brief but you have heard a lot of these arguments, you have
24 heard numerous motions to dismiss, so I want to cut to the
25 chase and get to the real heart of the issue, which is

1 specific jurisdiction, does this Court have specific
2 jurisdiction, and the question is did Delphi Korea
3 purposefully avail itself of the United States? And Delphi
4 Korea cited to a number of cases they claim foreign
5 defendants were similarly situated to Delphi, and the Court
6 found that personal jurisdiction didn't exist. We can't shy
7 away from those cases, Your Honor, but I have to say those
8 cases, and Delphi Korea says this themselves, we are premised
9 on the understanding -- the Court has said this, in order for
10 the court to exercise jurisdiction over a foreign defendant
11 that sold to another foreign company, so like here where
12 Delphi Korea didn't sell directly into the United States,
13 that the foreign defendant would have to control the
14 distribution decisions of the entity to whom it purchased.
15 So, for instance, Delphi Korea sold to Hyundai, sold valve
16 timing control devices. Hyundai installed those valve timing
17 control devices in its cars, sold those cars directly into
18 the United States.

19 THE COURT: But other places; they didn't do
20 anything special because it was the United States, right?

21 MR. REISS: Well, Your Honor, I wanted --

22 THE COURT: They weren't required to send them to
23 the United States?

24 MR. REISS: Correct, and the 6th Circuit, and I
25 want to just read from the Fortist case, and I'm quoting, a

1 defendant's interposition of an independent middleman between
2 itself and the forum does not itself place a defendant
3 outside of the forum's reach. So the Fortist case
4 specifically held, this is an instance where Fortist was a
5 shipping company, they had franchised out their ships to a
6 Canadian company so you have two entities, two foreign
7 entities. They didn't know what the Canadian company was
8 going to do. There was some documentation saying that the
9 ship was outfitted for the Great Lakes, which, by the way,
10 the Great Lakes are in a lot of different places and there
11 was some suggestion that it may go to Ohio but there was no
12 certainty it was going to go to Ohio, and, in fact, the
13 Canadian company wasn't even the company that was controlling
14 the ships, they ultimately ended up franchising it out to
15 another company that ultimately sailed the ship into Ohio and
16 that's where the damage occurred.

17 But the court was clear that they were following
18 Justice O'Connor's test in the Asahi test, and that is this
19 notion of commerce plus. So, number one, does the foreign
20 defendant place its goods into the stream of commerce? There
21 is no debate here that Delphi Korea placed its goods into the
22 stream of commerce. And so the second question, and these
23 cases uniformly hold this, is there additional facts that
24 indicate that the foreign defendant knew or could concede
25 that those products would end up in the United States?

1 That's what those cases hold and the additional facts that we
2 allege, and, Your Honor, I will concede they are not all in
3 our complaint because some of those facts we learned
4 subsequently, and we would be happy to amend our complaint if
5 we needed to, but those cases show that -- those facts that
6 we allege show that, yes, it is very important that the RFQ
7 in some instance specify the destination of the automobile,
8 and that's the important fact because automobiles are
9 different depending upon where they go.

10 So, for instance, you have in Japan -- in some
11 countries you have the steering wheel on one side of the car,
12 in the United States you have got the steering wheel on the
13 other side of the car. Now, I don't proffer to be an expert
14 in automotive parts but this product we are talking about
15 here is valve timing control devices, that deals with engine
16 management system. Different countries I imagine have
17 different emission requirements, so there very well may be
18 reasons and justifications why these foreign defendants,
19 Delphi Korea, need to know where the product is ultimately
20 going to be sold and shipped. Unlike any of these --

21 THE COURT: You haven't alleged that and there is
22 no indication anywhere that they changed the valve timing
23 control device to fit any specific country.

24 MR. REISS: Yes, Your Honor, well, it is difficult
25 for us because unlike many of these cases we haven't had the

1 benefit of discovery so how can we know this, but we do know
2 that Delphi Korea sold the products to Hyundai among other
3 makers knowing full well those products were going to reach
4 the U.S. We plausibly allege that in many instance the RFQs
5 specified where it was going. I mean, one would think there
6 is a reason as to why the RFQ would specify. We know, as I
7 mentioned before, that again cars are different depending
8 upon where they go and there are different specifications.
9 Can we allege that as to Delphi Korea? Well, we can't
10 without the benefit of any discovery and any documents, but
11 we --

12 THE COURT: In general are valve timing control
13 devices different, I mean, what are they -- are there
14 different models or different aspects of these devices?

15 MR. REISS: Well, I will say that one point that
16 defendants have made repeatedly to us is not one that we
17 necessarily agree with on every point but that these products
18 are different and customized depending upon the vehicle.
19 Defendants have repeatedly told us that over and over again.
20 I think it is possible that --

21 THE COURT: These valves are different? Where have
22 they said that?

23 MR. REISS: They have made those representations to
24 us repeatedly through negotiations and through discussions,
25 that it is -- in terms of how the products are manufactured

1 that they are customized products in certain situations.

2 THE COURT: In other component parts or in this --

3 MR. REISS: Well, again, we haven't had the benefit
4 of discovery for valve timing control devices so we don't
5 know the parameters or the specifics but we do know this
6 much, that valve timing control devices differ upon the car
7 that they are being manufactured in.

8 THE COURT: You know that?

9 MR. REISS: Yes, and that's why there is an RFQ
10 process. The RFQ specifies the type of valve timing control
11 devices and it needs to be compatible with the given make or
12 model.

13 THE COURT: Okay.

14 MR. REISS: Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. WILLIAMS: Good afternoon, Your Honor.

17 Steve Williams for the end payors.

18 As you saw, Ms. Zwisler is a very good lawyer,
19 which is why we need two of us to try to respond to her
20 arguments. I'm going to be brief because we have had a long
21 day and we still have some things to get to, but I think as
22 to the Delphi L.L.P. motion it is pretty clear it should be
23 denied. If it is not denied on the record before the Court,
24 then there should be discovery but it can't be granted.

25 Carrier Corp. in the 6th Circuit says our burden --

1 plaintiffs' burden on this motion is, quote, relatively
2 slight, the facts must be construed in our favor, and
3 weighing contested facts is inappropriate. You have heard a
4 lot of facts put in and we have contested it. You can go up
5 to 5725 Delphi Drive in Troy, U.S. government today believes
6 that's where Delphi L.L.P. does business.

7 THE COURT: Today?

8 MR. WILLIAMS: Today. The IRS maintains that
9 Delphi L.L.P. is a U.S. domestic corporation headquartered in
10 Troy. Their SEC filings, as we set forth in our papers,
11 still say they are there. Beyond that without discovery,
12 which we haven't had, the materials that Mr. Reiss'
13 declaration submit show people being hired by Delphi L.L.P.
14 to work in Troy. People in Troy being responsible for things
15 like the power train systems division, which this product
16 fits within.

17 So we have some declarations, we have some facts
18 controverting those. Under Carrier that should go in our
19 favor if it is decided on this record, and if it is not then
20 there should be discovery, but we would submit it cannot be
21 granted.

22 And one of the things I enjoyed about preparing for
23 this motion is it was reminding me of law school because we
24 are talking about specific and general jurisdiction.
25 Ms. Zwisler talked about the Daimler case a little bit, and I

1 think the presentation may have stretched that case a little
2 far or perhaps suggested that dicta was the holding, and I
3 think that's why she made the comment that the commentators
4 suggest a certain conclusion because, number one, in Daimler
5 neither defendant at issue in the case had any connection to
6 the forum where the injuries took place, it is not like here.

7 Number two, it was an errant (phonetic) tort claim
8 act case, and the Court was very clear that principles of
9 commodity and foreign relations heavily weighed into the
10 decision there.

11 What I found very interesting about the Daimler
12 case and the Goodyear case we cited though are the two most
13 recent Supreme Court cases on jurisdictional issues, is I
14 believe they both cited with approval the case called Perkins
15 vs. -- I will not pronounce this correctly -- Benguet,
16 B-E-N-G-U-E-T, Consolidated Mining. This is a case from 1952
17 from the Supreme Court again cited with approval in Daimler
18 and in Goodyear, and what it said is when a Philippine mining
19 company during World War II temporarily for a few years only
20 moved to Ohio and conducted what the court referred to there
21 as limited operations in Ohio, Ohio was a forum for suits
22 against that company that had nothing to do with the state of
23 Ohio, and if that case is still good law, those facts are
24 very similar to what we have here for whatever reason, and we
25 don't need to decide what that reason is today, Delphi L.L.P.

1 was here in Troy for years.

2 THE COURT: Are you saying now -- I just want to
3 get this clear, it is your position that the L.L.P. is now in
4 Troy?

5 MR. WILLIAMS: Our position is the facts are
6 controverted, the IRS says they are in Troy, the business
7 press says they are in Troy, we have had no discovery, we
8 have not been up to Delphi Drive to see what they are doing
9 up there, but certainly the imprimatur of the government and
10 the local Detroit business press in all allegations in the
11 materials we have submitted, as I said, if this is decided on
12 this record we don't think under Carrier the Court is
13 permitted to make that call in their favor. We are not after
14 chasing pyrrhic victories, if it turns out that what they are
15 saying after there is a proper opportunity to evaluate it
16 rather than declarations by someone in Jersey, England or
17 somewhere else, they don't support that then we are not going
18 to pursue it, but on this record here I don't think the Court
19 can come to that conclusion. And I think that --

20 THE COURT: And I don't want to offend the IRS.

21 MR. WILLIAMS: None of us do. I think this case is
22 very similar to Carrier Corp., and I think that is the
23 governing case here.

24 THE COURT: Okay.

25 MR. WILLIAMS: And I think both on the specifics of

1 how you look at it, and you know we all put forth in our
2 papers, you can either decide on the papers, you can have an
3 evidentiary hearing, but the posture right now is whether or
4 not this can be decided on the paper. We would submit no.

5 THE COURT: Okay. Ms. Zwisler?

6 MS. ZWISLER: Just briefly, Your Honor. With
7 respect to specific jurisdiction, everything that Mr. Reiss
8 says with respect is all conjecture about what they have
9 alleged that our client knew about cars in Korea. What the
10 facts are is Mr. Rim's declaration, paragraph 17, DPSK does
11 not now and has never designed its products for the U.S.
12 market. So what that is saying is that the companies sells
13 the products and there is no evidence that it has anything
14 other than -- any idea where the cars are going. And as we
15 discussed, knowledge alone is not enough, there has to be
16 something else, and they haven't alleged anything else
17 including that Fortist case. The Fortist case had a contract
18 that said that the distributors had to make the product --
19 make the ships rigged for the Great Lakes and dockable in
20 Toledo, Ohio. There is no contract here that says you need
21 to send our products into the United States so there is no
22 specific jurisdiction over DPSK. You can't get this
23 jurisdictional discovery by saying that guy's declaration
24 might be false. I think that's a bedrock principle here.

25 We have got sworn declarations, they have no way of

1 challenging it other than saying if you give us discovery
2 maybe we will find out something different. That's not a
3 basis to order jurisdictional discovery. They have to have
4 something that calls that -- the truth of those declarations
5 into question and they don't, they have just got conjecture.
6 Maybe they knew that products might go to the United States,
7 maybe Hyundai ships some cars to France, I mean, who knows?
8 They can't get there like that.

9 THE COURT: What about Mr. Williams' argument in
10 Troy?

11 MS. ZWISLER: Okay. So there is an entity in Troy.
12 In fact, my client is here and I should have introduced him,
13 Joe Papelian, he's counsel to the Delphi Troy entity. That
14 company is called Delphi Automotive Systems, L.L.C., that is
15 not --

16 THE COURT: It's a separate company?

17 MS. ZWISLER: It is a totally separate company. It
18 is a U.S. company, it used to be a defendant and as I said it
19 was dropped voluntarily. So that Troy, Michigan company is
20 not the L.L.P., number one. Number two, the IRS has said
21 that it is pursuing an argument that Delphi is -- not the
22 L.L.P. but the Delphi global entity is actually a domestic
23 entity. They are essentially saying that because Delphi
24 Automotive Systems, L.L.C. is resident in Troy, it is a
25 domestic company and the L.L.P. is -- even though it is in

1 the United Kingdom doesn't change that fact.

2 Well, Delphi itself is contesting that, it has not
3 been decided, the IRS has not won, just because they said it
4 doesn't mean it is true. So the only thing that you need to
5 know is the former defendant that is in Troy, Michigan is
6 Delphi Automotive Systems, L.L.C., that is one of the global
7 Delphi entities that is indirectly related to the two
8 defendants that are in this case in the sense that they are
9 all in the same umbrella of a company that has not even been
10 named. So that's the answer to my argument is that the Troy,
11 Michigan presence of a subsidiary of a global company doesn't
12 require discovery to figure out whether it is true, just
13 drive up there, that's what the sign says, it doesn't says
14 Delphi Automotive L.L.P.

15 The other thing I would say about the
16 jurisdictional argument that Mr. Williams made is that what's
17 the hook for jurisdiction in the U.S. under Carrier Corp. or
18 otherwise? Those cases are holding that if you have
19 jurisdiction over a subsidiary the question is can you get
20 the foreign parent? This is the reverse because there is no
21 jurisdiction, there is no defendant that you have
22 jurisdiction over. So basically they are trying to have you
23 exercise jurisdiction by virtue of their claiming
24 jurisdiction over DPSK, means that you have jurisdiction over
25 a parent. And the Alexander Associates case that you have

1 cited a number of times holds that while you might be able to
2 get jurisdiction over a foreign parent by virtue of its
3 control of a sub, the reverse is not true, so even if you had
4 jurisdiction over DPSK, which you don't, no specific
5 jurisdiction as we have discussed, even if you did that
6 wouldn't mean that you could get jurisdiction over the
7 parent, it has got to be the reverse.

8 THE COURT: Okay.

9 MS. ZWISLER: So that's -- but I would go back to
10 my final point to this idea, of course plaintiffs would love
11 to have pre-complaint discovery in every case I have ever
12 been in they would love to get into our records before. They
13 have to have a factual basis to counter sworn declarations.
14 They can't just say the guy is lying. That's basically what
15 they have told you, he might be lying, if he's not, okay, we
16 won't put the client through any problem. That's not a basis
17 to order jurisdictional discovery. Thank you.

18 THE COURT: Thank you.

19 MR. REISS: If I might make one point? Ms. Zwisler
20 suggested that it was mere conjecture on our part that Delphi
21 Korea may or may not have known the products were going to
22 the United States, but I just want to clarify that in our.

23 THE COURT: Let's assume they did know they were
24 going to the United States, does that mean they targeted the
25 United States?

1 MR. REISS: I think that's part of the problem is
2 that the defendants have introduced this targeting
3 requirement, that language is nowhere in the 6th Circuit
4 opinions that we have cited to you. I would submit that
5 there is no requirement that they, quote/unquote, target.
6 The only thing that is required is that, A, they put the
7 goods into the stream of commerce, and B, they had knowledge
8 or could anticipate that the goods would end up there.

9 THE COURT: Or maybe do some affirmative act, isn't
10 that what they have to do?

11 MR. REISS: I would submit the affirmative act is
12 knowing full well the goods were going to be there and
13 deriving revenue as a result of that, and they are engaging,
14 as we have alleged, in price-fixing conduct.

15 THE COURT: Okay. Thank you. I appreciate it,
16 Mr. Reiss.

17 MR. REISS: Thank you, Your Honor.

18 THE COURT: All right. Anybody else on this
19 next -- we are all done. Okay. Is there anything else
20 before we conclude this session?

21 MR. WILLIAMS: I would say for plaintiffs and maybe
22 everyone, I don't think for Your Honor, but we still have
23 matters with the master.

24 THE COURT: Yes, you still have matters. Okay.

25 (An off-the-record discussion was held at

1 2:54 p.m.)

2 THE COURT: Okay. Thank you.

3 THE LAW CLERK: All rise. Court is in recess.

4 (Proceedings concluded at 2:55 p.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of Case No. 12-02311, on Wednesday, May 6, 2015.

s/Robert L. Smith

Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 05/19/2015

Detroit, Michigan